No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. II.

Pages 529 to 1056, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

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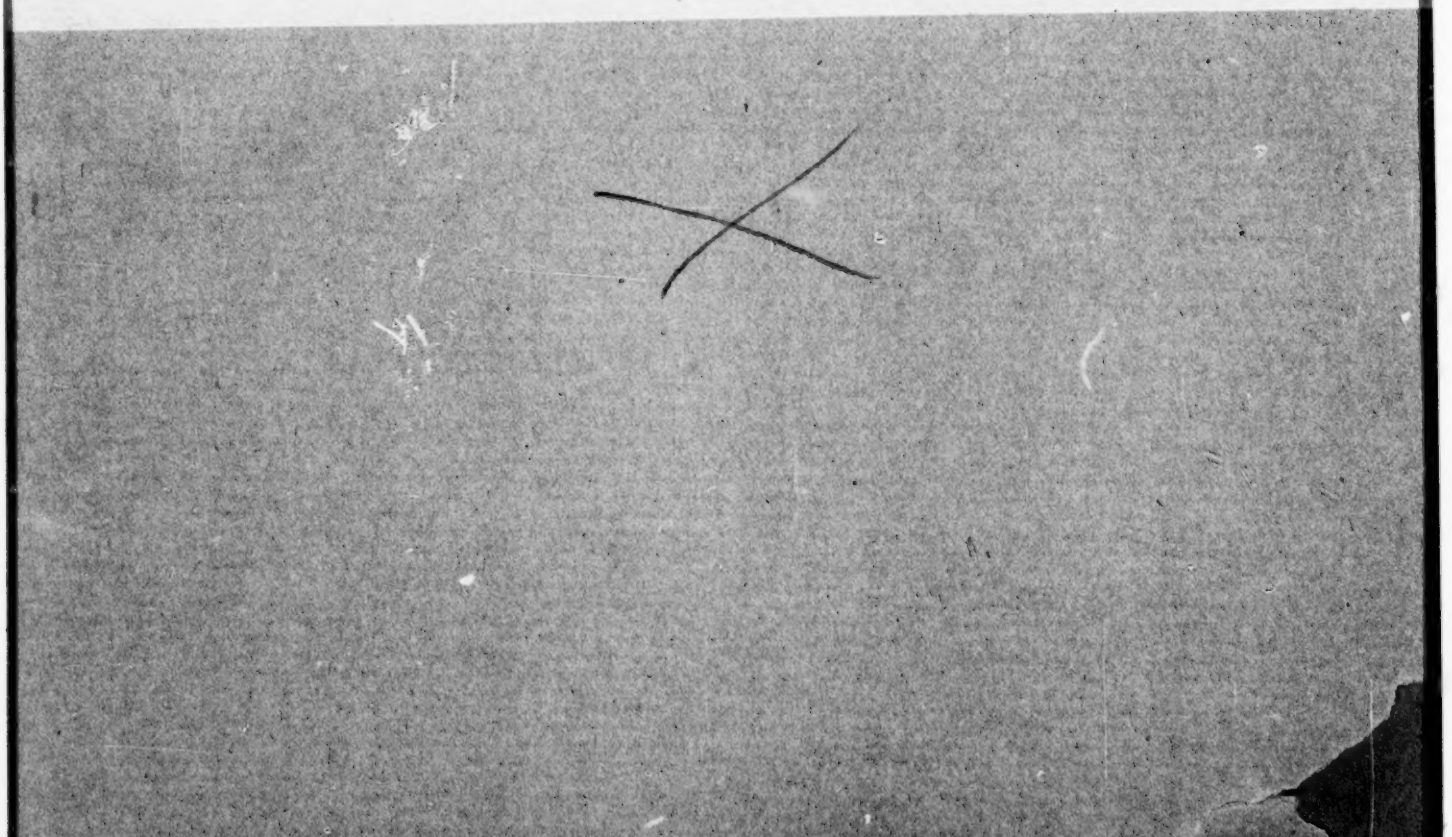

(Testimony of Albert Jemison.)

Q. Do you remember about how many?

A. Well, I think there was about six or seven, somethink like that, maybe ten that I know of; there might have been more in other parts that I didn't know anything about, you see, but that is all I know—four or five—I couldn't say how many.

Q. Were you at one and the same time locating people on land and estimating the amount of timber for Mr. Cobban?

A. Well, no, not exactly. There was other parties that showed these people onto their claims.

Q. I was speaking about those that you located; you didn't do any work in locating?

A. Well, to go right myself with them, I don't know as I went on any in October.

Q. Now, what did you do in this work of estimating the amount of timber there was on the land?

A. Do you mean when I was working by the day?

Q. It doesn't make any difference to me how you were working; what I want to know is what you did in the way of estimating the amount of timber there was upon the lands that you estimated?

A. Well, when I estimated timber—but working locating when I estimated it—

Q. I was not speaking about that. You said after you quit locating people you went to estimating timber.

A. I don't know as I could say I was estimating.

Q. What did you do?

(Testimony of Albert Jemison.)

A. I was compassing for the estimators, subdivided the quarters into five-acre lots.

Q. And then those estimators would estimate the amount of timber there was on those lots?

A. Yes, sir.

Q. What lands, other than these lands taken up by these people under the Timber and Stone Act, did you estimate in that way, by subdividing into five-acre lots?

A. You mean lands outside of those?

Q. Yes.

A. Well, I don't know; there was several pieces, I know, of lands that we went through outside of entries that was taken then; I don't know how many.

Q. There was a very large tract of land taken under the Forest Reserve Act, was there not?

A. Yes, sir.

Q. You went all over those lands in that way?

A. Yes, sir.

Q. And estimated the amount of timber there was on those lands? A. Yes, sir.

Q. And there were other lands which Mr. Cobban had purchased from various parties? A. Yes, sir.

Q. You went over those lands in the same way?

A. Yes, sir.

Q. The aggregate of those lands in acres was very much larger than the aggregate number of acres taken by these various parties under the Timber and Stone Act, wasn't it? A. I don't understand that.

Q. That is, there was very much more land?

(Testimony of Albert Jemison.)

A. More land in the one hundred and sixty?

Q. No, more land taken up by Mr. Cobban under the Forest Reserve Act and purchased from other parties?

A. Oh, yes, there was.

Q. Than there was included in these timber and stone entries? A. Yes, sir.

Q. And those were estimated as well as these timber and stone lands? A. Yes, sir.

Q. When did you quit that work?

A. I just couldn't say; some time in December, I think.

Q. December of 1899?

A. Yes, or along later than that; I don't know just when exactly.

Q. How much country did these timber and stone entries cover; over what extent of country did they run?

A. Well, one or two counties; that parts in two different counties up and down the Blackfoot river.

Q. You didn't locate any in Deer Lodge County, did you? A. No, sir.

Q. Confine yourself to the lands located by yourself.

A. It was all in Missoula County.

Q. And over what stretch of country—ten miles by four miles or five miles.

A. Oh, twenty miles by twenty.

Q. Now, were these forst reserve lands and other lands acquired by purchase from various parties interspersed between these, or did they lie outside?

(Testimony of Albert Jemison.)

A. They laid outside, and I think some in those; most was outside of these lands.

Q. Now, which did you subdivide and estimate first, the forest reserve lands and the other lands lying outside or these timber and stone lands?

A. I think we estimated right around over the timber and stone lands first; some of them, I know, anyway. We worked everywhere.

Q. Without any particular reference to where it was?

A. Yes, without any particular reference.

Q. Now, you didn't work on any of these lands, estimating the amount of timber that was on them for Mr. Cobban, prior to the time that the parties had made proof on them?

A. I didn't report to Mr. Cobban at any time any estimates that I made myself.

Q. I understand, but I speak about it afterwards. Mr. Jemison, when you were working with Sparks and Handley; did you and Sparks and Handley work on any lands upon which final proof had not been made?

A. I couldn't say about that; I don't remember that.

Q. You don't know that you did, do you?

A. No, sir, I don't remember it.

Q. Don't you remember that you didn't, Mr. Jemison?

A. Well, I couldn't say about that, because we went on lands that I didn't know who took or anything about it, and I didn't know whether that was proved upon or not.

(Testimony of Albert Jemison.)

Q. But as far as you knew?

A. As far as I knew, I supposed it was all entered land.

Q. Then you don't know of your having worked on any land upon which final proof had not been made?

A. Yes, I will recall that; I know some claims.

Q. What claims?

A. I believe that we was on—no, it wasn't, either. I can't pretend to say.

Q. From what source did you get your information concerning whom Mr. Handley was working for and whom Mr. Sparks was working for?

A. By conversations in and around camp; they told me.

Q. Conversations with whom?

A. With Mr. Handley and Mr. Sparks.

Q. You know about who their employer was simply from what they told you? A. Yes, sir, that is all.

Q. You have no information about it from any other source? A. No, sir.

Mr. WALSH.—We move to strike out all the testimony of this witness concerning who Sparks represented and who Handley represented.

Redirect Examination.

(By Mr. ZEVELY.)

Q. Now, Mr. Jemison, first with reference to the conversation had by Mr. Maynard and myself with you yesterday afternoon here in the courtroom and then at the

(Testimony of Albert Jemison.)

hotel. When I first spoke to you about your testimony here, didn't I say to you that yesterday afternoon for the first time you had mentioned the fact of the loan having been made by Mr. Cobban for these things—that you then used the word "loan" for the first time?

Mr. BICKFORD.—Objected to; leading.

A. Yes, sir.

Q. And that was the first time that that word had occurred in your testimony, either when you testified before me, or as I understood your testimony before the grand jury, that that was the first time any such thing had been suggested. That was what I said to you, wasn't it?

Mr. BICKFORD.—Objected to; leading.

A. Yes, sir.

Q. Didn't I further say to you, and didn't Mr. Maynard say the same, that all we wanted from you and all we desired from you, and all we would permit you to do if we knew anything about it, was to tell the truth, the whole truth and nothing but the truth about these matters?

A. Yes, sir.

Q. And repeated that a number of times?

A. Yes, sir, and, if your Honor please, that is what I am trying to do.

Q. Now, I want to get at the date specifically, if I can, when you first commenced to work for Mr. Griswold in the matter of locating these claims?

A. I couldn't say the date.

Q. About what time was it?

A. You mean the first time?

(Testimony of Albert Jemison.)

Q. When you first commenced to work for Mr. Griswold?

A. Well, sir, I couldn't say; it was some time just a few weeks before the 4th of July in that year.

Q. Was it early in June, 1899?

Mr. BICKFORD.—Objected to; leading.

A. I couldn't say to the date.

Q. Several weeks before the 4th of July?

A. Yes, sir.

Q. When did you commence to work for Mr. Cobban in the matter of locating claimants for him?

A. Well, that was some time after that; when it was I couldn't say.

Q. Get as near to it as you can.

A. I just couldn't say; I presume it was about a month and a half or two months—about two months after that, or three, I couldn't say.

Q. Two or three months after that? A. Yes, sir.

Q. Now, when did Mr. Cobban first say to you that you must say to these people that this money that he advanced must be as a loan; was that at the time you first went to work for Mr. Cobban, or was it after that?

Mr. WALSH.—Objected to as leading.

A. It was at the time that I was making the agreement about locating these claims for Mr. Cobban.

Q. You say now that when you first began, I understand, to locate for Mr. Cobban, that he at that time told

(Testimony of Albert Jemison.)

you that you must say to these people that he was loaning or advancing the money?

A. Yes, sir, I believe that is the way I understood it.

Q. Had you made any locations at that time for Mr. Cobban? A. I don't think I had.

Q. Now, what did you tell Mr. Maynard and myself last night at the hotel as being the time when Mr. Cobban notified you that you must use the word "loan"?

Mr. WALSH.—Objected to, because the United States has no right to cross-examine this witness concerning what he stated to counsel; the statements made by witness to counsel concerning these matters being irrelevant and immaterial.

Q. Answer the question.

A. Well, I am pretty sure that it was at this time when we made this—

Q. I am asking you what you told us last night.

A. Well, I don't remember now just how it was.

Q. Now, I will ask you to state in full the conversation that you had with Mr. Cobban at the time he told you, you must say to these parties that this must be treated as a loan, and if he said anything further about it.

Mr. BICKFORD.—Objected to; leading; second, irrelevant and immaterial.

A. Well, he told me something about we must make this proposition to the people as to being a loan, and then if they didn't want to sell to him, they could take—it would be one hundred dollars for locating them, I believe.

(Testimony of Albert Jemison.)

Q. Did he say anything else to you about the character of people you must do business with—what kind of people they must be?

A. Why, I believe he spoke something about that.

Q. You believe, but do you know; what did he say?

A. Well, he said to locate people that I could trust.

Q. In what way; what did you understand by that?

Mr. WALSH.—We object to that; what Mr. Cobban said about it is all the witness can answer.

Mr. ZEVELY.—Let the objection be entered, and now you answer the question.

A. I don't know just exactly how I would take it from him.

Q. I will ask you if you didn't say to Mr. Maynard and me last night at the hotel, that Mr. Cobban never said to you that these persons whom you were to locate were to treat this as a loan until nearly the end of the work, until after you had located most of the people under this contract, and that you only located a few after he made that statement to you?

Mr. WALSH.—We object to the question for the reason that the complainant, having called this witness, has no right to cross-examine him concerning these matters, and for the reason that the statements made by the witness to the counsel last evening are immaterial and irrelevant.

A. I said that after I had located these for Griswold, the majority of them.

Q. After you had located these for Griswold?

(Testimony of Albert Jemison.)

A. Yes, that we had this conversation, and that that was the biggest majority of the people that I located.

Q. That was what you told us last night, that had been already located?

A. Yes, they had been located already.

Q. Now, Mr. Jemison, you asked Mr. Walsh in his cross-examination to define an agreement or contract; he was using the words as synonymous words. Of course, he didn't do it purposely, but he misled you as to the definition.

Mr. WALSH.—I don't think so.

Q. (Continued.) He said to you that it was the coming together of two minds, two persons agreeing about a certain thing. He didn't explain to you that they need not say that by word of mouth, but that the understanding may be reached otherwise. You further said to him, after making this inquiry of him, that you did not know that they were compelled to make these deeds or to enter into this contract with Cobban. A further part of the definition of a contract or agreement is that they must be concerning a lawful matter, and that in an unlawful proceeding it would not be in any sense binding, and in that you were more right about it than Mr. Walsh. And so, when we go on further to understand that these people had agreements, we will not make the inquiry on the basis that it was done by word of mouth in every instance.

Mr. BICKFORD.—We move to strike out the statement of counsel as being argumentative, and not a proper ques-

(Testimony of Albert Jemison.)

tion to propound to the witness in the course of this investigation.

Q. Now, Mr. Jemison, in your testimony here about this entry of yours, you testify that at the time you made this preliminary oath, your intention and purpose was to take that land up for your own use and benefit; that is, when you went down first, when you filed; didn't you so testify? A. Yes, sir.

Q. Now, when you went down your father was with you, when you went to make your final proof, was he not?

A. Yes, sir.

Q. Did or did not you and your father take with you the money necessary to make this final proof?

Mr. WALSH.—He has already answered that; he told on direct examination that, two or three days before this, he went and saw Mr. Cobban about the matter and arranged to get the money.

Mr. ZEVELY.—If you have an objection, make it.

Mr. WALSH.—This is an objection. He testified in his direct examination that, two or three days before the final proof, he went to Mr. Cobban and arranged to get the money from Mr. Cobban to make final proof, and that he did not take the money there with him, but got it, and so the question has been asked and answered. We object to it also because it is leading.

A. I can't say as we took it with us; we had money, though, where we could purchase if we wanted to.

(Testimony of Albert Jemison.)

Q. Now, when you went to make your final proof, you testified here that you had no prior agreement with Mr. Cobban about it. Did you see Mr. Cobban on that day or two or three days prior to going to the land office and have any talk with him about the matter?

Mr. WALSH.—I don't think that is a fair question to put to this witness. I object to the question put in that way. The question put to the witness is whether he had any agreement with Mr. Cobban about the land. The witness did not testify as counsel stated in the proof, and it is not fair to the witness to say that he did. The testimony in the proof is that he had no agreement or contract by which he had agreed to sell this.

Mr. ZEVELY.—I am not aware that the witness needs your protection.

The EXAMINER.—The objection goes into the record. Answer the question.

A. I can't say as I did.

Q. Did you pay for that land yourself at the land office?

Mr. WALSH.—Objected to as not proper re-examination.

A. No, sir.

Q. Who went with you and your father to the land office? A. I think Mr. Catlin did.

Q. Did you get a final receipt from the receiver of the land office? A. No, sir.

Q. Or from anyone? A. No, sir.

(Testimony of Albert Jemison.)

Q. What did you do, Mr. Jemison, after you got through signing your final papers at the land office?

Mr. WALSH.—All of this is objected to as not proper redirect, and as a matter that was gone into fully on direct examination.

A. Some time after that we went up—

Q. How long?

Mr. WALSH.—Objected to because he answered that this morning; he testified this morning that he made the final proof in the morning and in the afternoon some eight or ten or twelve hours after the final proof was made, they went to Mr. Cobban's office.

A. We went to Mr. Cobban's office.

Q. And what happened there?

A. We signed the deeds.

Mr. WALSH.—Objected to as not proper re-direct, and as a matter that was gone into fully in chief.

Q. Did you get any money?

Mr. WALSH.—Objected to for the same reasons.

Q. Now, do you mean to say that you didn't have any understanding of any sort with Mr. Cobban before you went down there to the land office that you were to make that deed to him as soon as you signed that final proof?

Mr. BICKFORD.—Objected to as leading, as not proper redirect, and as cross-examination of complainant's witness.

A. I can't say as I did, sir.

Q. Can't say that you had any understanding?

(Testimony of Albert Jemison.)

A. The business was known so around that I knowed what the understanding was without asking.

Q. Then, you did have an understanding without asking, did you?

Mr. WALSH.—Objected to as leading.

A. Yes, we knew what was going on without asking anybody.

Q. You didn't ask him in so many words?

A. No, sir; only I told him I thought I wanted about one hundred and fifteen dollars.

Q. He didn't loan you that money, did he, to pay for that land, the four hundred dollars to pay for that land; he didn't loan you that, did he?

Mr. BICKFORD.—Objected to as leading, not proper re-direct and as calling for a conclusion of the witness.

A. I can't answer that. He paid it into the land office for us.

Q. Did you ask him to loan you the money?

A. No, sir, we didn't.

Q. Then he didn't loan it to you, did he?

Mr. WALSH.—Objected to as leading, and not proper redirect.

A. Well, I don't know as he did.

Q. Well, you know in fact that he didn't, don't you?

Mr. BICKFORD.—Objected to as leading, and not proper redirect.

A. Well, that is hard to say.

Q. Do you know what loan means, and what a loan is?

(Testimony of Albert Jemison.)

A. (No answer.)

Q. You can't answer that?

A. You ask me if I know what a loan means?

Q. Yes, what is a loan?

A. Well, it is getting money from a man.

Q. Borrowing it with the intention of paying it back, isn't it?

Mr. BICKFORD.—Objected to; leading.

A. I guess that is it.

Q. So that, Mr. Jemison, when you answered this question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which you may acquire from the government of the United States may inure in whole or in part to the benefit of any person except yourself?" To which you answered: "No, sir." That was not a truthful answer, was it?

Mr. WALSH.—Objected to as leading and as not proper redirect.

A. Well, I don't know.

Q. Read that over again, and see whether you did in any manner or in any wise have any understanding with Mr. Cobban about that?

A. I don't know as I can say at that time that I thought I was signing any lie or anything like that.

Q. Didn't you know then on that day when you

(Testimony of Albert Jemison.)

signed that paper that you intended to go right up to Mr. Cobban's office and make him a deed to it?

A. I did, after I proved up, yes, sir.

Q. You knew that when you proved up?

A. Yes, sir.

Q. Now, as to Jacob F. Jemison; you testified before that you were a witness for Jacob F. Jemison didn't you? A. Yes, sir.

Q. And you knew when your father and you went down there and he made his final proof and you acted as a witness for him, you knew that his purpose was, as soon as that final proof was completed, to go up and make a deed to Mr. Cobban?

Mr. WALSH.—Objected to as leading, and as not proper redirect.

A. Yes, sir.

Q. There wasn't anything said about that being a loan to your father; Mr. Cobban didn't suggest loaning your father that money?

A. Not as I know anything about.

Q. He didn't suggest loaning it to you when he and you and your father were together? A. No.

Mr. BICKFORD.—We object to all of this as being leading and not proper redirect.

Q. Now, with reference to these other people, Mr. Jemison, you testified here on your cross-examination that these people who came to get you to locate them, or whom you located, usually came to you and that you

(Testimony of Albert Jemison.)

did not hunt any of them up; that is your testimony. Now, isn't it a fact that you let it be known in your neighborhood that you were doing that business for Mr. Cobban?

Mr. WALSH.—Objected to as leading and not proper redirect.

Mr. ZEVELY.—Will you allow me to finish the question?

Mr. WALSH.—I thought you had finished.

Q. (Continued.) For Mr. Cobban, and that when they had made this entry and made their final proof, that they would get all their expenses and one hundred dollars in addition from Mr. Cobban?

Mr. WALSH.—We object to this question because it is leading; because it is not redirect, and if material at all, is manifestly such a question as could only be put to the witness on his direct examination.

A. Yes, sir.

Q. Now, you testified as a witness—there is no use to take those papers, because they were exhibited to you before—you were a witness for Eveline Jemison?

A. Yes, sir.

Q. Who, I believe, is your sister in law?

A. My mother.

Q. I beg your pardon, your mother. Now, when you testified as a witness at her final proof, that there was not any understanding or agreement or arrangement in

(Testimony of Albert Jemison.)

any manner or with any person or corporation or any one else, that that land was to be conveyed to another person when the final proof was made, you didn't state the fact, did you?

Mr. WALSH.—That is objected to as leading, and as not proper redirect.

A. I don't just understand you.

Q. The understanding was then that when she finished her final proof, she was to go to Mr. Cobban's office and make a deed to him, was it not?

Mr. WALSH.—The same objection.

A. I don't know myself.

Q. Well, that was your understanding?

Mr. WALSH.—We object also, because the understanding of the witness is a matter of no consequence whatever; the only fact that could be testified to is some fact from which the Court can draw the conclusion as to whether there was an understanding or not.

Mr. ZEVELY.—There seems to be a very great distinction, when the gentleman is testifying on cross-examination his understanding is very valuable, and when testifying for the other side, it is not valuable.

Mr. WALSH.—He is your witness.

Mr. ZEVELY.—There are some other rules about that.

A. I believe so, yes, sir.

(Testimony of Albert Jemison.)

Q. Now, Mr. Jemison, you testified here that Mr. Cobban finally directed you that, when you made propositions to locate people on these timber and stone claims, you must make the proposition to them as being a loan, and that you must be careful to select discreet persons?

Mr. WALSH.—We object, because the witness has not testified to that.

Q. Well, what was the word—close mouthed or whatever it was.

Mr. WALSH.—He didn't say so; we object.

Q. When he said to use the word "loan," didn't he say it in such a manner and in such a way as to convey to your mind the impression that it was not in fact true?

Mr. WALSH.—We object to that; that is not a fair way to examine any witness. It is leading; it suggests to the witness the answer that is desired, and the manner of counsel in putting the question is calculated to draw an affirmative answer from the witness, and not to elicit the truth.

A. I couldn't answer for his mind.

Q. Now, in the case of Sarah Yarger, you were a witness for her? A. Yes, sir.

Q. Wasn't it your understanding that as soon as Mrs. Yarger made her final proof and went up to Mr. Cobban's office and signed this deed that she would receive one hundred dollars?

(Testimony of Albert Jemison.)

Mr. WALSH.—Objected to as leading and not redirect.

A. Yes, sir.

Q. Isn't that true of Emma Dildine, for whom you were also a witness; wasn't that your understanding with reference to her, too?

Mr. WALSH.—The same objection to this question.

A. It was, after she sold her claim, yes, sir.

Q. What do you mean by after she sold her claim?

A. To Mr. R. M. Cobban, I knew that she must have got one hundred dollars out of it or she wouldn't have sold it.

Q. But wasn't it your understanding; you don't get my question; when you went there to act as a witness for her, wasn't it your understanding that she was to sell that land to Mr. Cobban?

A. Yes, I understood it that way, but—

Q. Now, wasn't that true—

The EXAMINER.—If he has not finished the question, let him go on; I understood him to say but or something.

A. That was my answer.

Q. That was the conclusion of your answer?

A. Yes, sir.

Mr. BICKFORD.—We move to strike the answer out because it is in response to an improper question, one which is not redirect examination.

(Testimony of Albert Jemison.)

Q. Wasn't that the understanding with reference to John G. Hendrix?

Mr. WALSH.—Objected to as leading and not redirect.

A. Yes, I believe so.

Q. Wasn't that also the understanding with reference to George Dildine?

Mr. WALSH.—The same objection.

A. Yes, sir.

Q. I understood you to say that George Dildine was a man worth about fifteen thousand dollars?

A. Yes, sir.

Q. There was not any suggestion at any time or place that he wanted to borrow any money from Mr. Cobban, was there?

Mr. WALSH.—The same objection.

A. I couldn't say about that.

Q. To your knowledge, I mean?

A. Not to my knowledge, no, sir.

Q. You located him on this land? A. Yes, sir.

Mr. BICKFORD.—All of these questions are leading.

Q. He never suggested to you that he wanted to borrow from Cobban the money to prove up, did he?

A. No, sir.

Mr. BICKFORD.—The same objection, and also it is hearsay.

Q. Zora Jemison; wasn't that same thing true of her,

(Testimony of Albert Jemison.)

that as soon as she finished her proof she would go to Cobban's office and make a deed?

Mr. BICKFORD.—Objected to as leading, not a statement of fact, but a conclusion, and not proper redirect.

A. Yes, sir.

Q. Isn't that also true of Laura Roll, Albert Ehle, John B. Reeve, Albert Starkie and Eliza E. Reeve, for whom you acted as witness on their final proof?

Mr. WALSH.—Objected to as leading and not redirect, and because the understanding of the witness about any of these matters is immaterial, irrelevant and incompetent.

A. Yes, sir.

Q. Now, about John Murtaugh. You were a final witness for him, too, were you not; I think you so testified here a while ago. Do you not know that there was an understanding that Mr. Murtaugh, as soon as he had made final proof was to go to Cobban's office and sign a deed and get one hundred dollars, the same as the others?

Mr. WALSH.—Objected to as leading, as not redirect, and because the understanding of the witness is immaterial, irrelevant and incompetent.

A. I understood it that way.

Q. Do you know, Mr. Jemison, or have you in your mind now about how many persons you located for Mr.

(Testimony of Albert Jemison.)

Cobban after he gave you that instruction that you say about using the word "loan"? A. No, sir, I do not.

Q. Now, when you carried people to these claims how long were you usually on the claim with them?

Mr. BICKFORD.—Objected to because it is a matter which was brought out on direct examination, and is therefore not proper redirect; it has been gone into before.

A. All the way from an hour to half a day.

Q. Now, on your cross-examination, you testified to running the compass, using the compass to segregate or separate a lot of land into five-acre tracts, and you testified that, besides this that Cobban got under the Timber and Stone Act, there was more that he had gotten under other means. Do you know of your own personal knowledge that he owned that land?

A. Well, I couldn't say that, only by hearsay.

Q. That was simply hearsay with you, as to his ownership of these other lands? A. Yes, sir.

Mr. ZEVELY.—That is all of the redirect examination.

Mr. BICKFORD.—For the sake of keeping the record straight, defendant now moves to strike out all the testimony of this witness and to exclude it from consideration in the hearing of this case, for the reason that the witness has been continuously led by counsel for the plaintiff, and that the examination as a whole has been

(Testimony of Albert Jemison.)

along the lines of compounding leading questions instead of according to the usual rules of court with reference to the interrogation of witnesses

The EXAMINER.—By consent of parties, the place of hearing testimony in this case is changed from the courtroom in Butte, to the office of Henry N. Blake, the Examiner, in Helena, Montana, and the witnesses who have heretofore been supoenaed in this case are required to be present at said office in Helena on Monday morning, December 16th, at 10 A. M., without further process, and further hearing is adjourned to said time and place.

HENRY N. BLAKE,
Examiner in Chancery.

Monday, December 16, 1901, 10 o'clock A. M.

Hearing resumed at the office of the Examiner in Chancery, H. N. Blake, in Helena, Montana, pursuant to adjournment. Redirect examination of Albert Jemison resumed.

(By Mr. MAYNARD.)

Q. Mr. Jemison, who was the first person that you located under the Griswold contract?

A. Why, I believe my father and myself took up the first two claims.

Q. Who was the last man that you located under the Griswold contract—or woman?

A. I couldn't say; I couldn't remember.

(Testimony of Albert Jemison.)

Q. Who was the first man you located under the Cobban contract?

A. I couldn't say which one was the first one of the parties. Mr. Hardy and Mrs. Hardy and Simon F. Cobban, I believe, would be the first.

Q. Would be what? A. Would be the first.

Q. Would be the first you said?

A. I believe so, yes.

Q. Who did you say, what Cobban?

A. Simon F. Cobban.

Q. Who was he?

A. I understood him to be an uncle of R. M. Cobban.

Q. Mr. and Mrs. Hardy were his father in law and his mother in law, were they?

A. I understood so.

Q. Was anybody else in that first contract—in that first party that you took under that Cobban contract?

A. I don't know as there was at that time.

Q. Now, you met Mr. Zevely on or about the 21st of April of last year—did you not, of 1901, in Missoula?

By Mr. BICKFORD.—We object to the question for the reason that it is leading.

A. Yes, sir.

Q. Where did you see him? A. In Missoula.

Q. Did he inform you of the business he was engaged in? A. I don't remember whether he did or not.

Q. What, say?

A. I don't remember whether he did or not.

(Testimony of Albert Jemison.)

Q. Did you talk with him at that time and place?

A. Yes, sir.

Q. In regard to your locating under the Griswold and Cobban contract?

By Mr. BICKFORD.—We object to that for the reason that it is leading.

A. Yes, sir.

Q. Did you after you had had a conversation with him —did you make an affidavit?

By Mr. WALSH.—We object to that for the reason that it is leading; and for the further reason that it is not proper redirect examination.

A. Yes, sir.

Q. Of what the facts were in connection with these transactions?

By Mr. WALSH.—We object to that for the reason that it is leading; and for the further reason that it is not proper redirect examination.

A. Why, to the best of my knowledge I did, yes, sir.

Q. What?

A. To the best of my knowledge I did, yes, sir.

Q. Did you go there on his invitation or did you go there voluntarily? A. Well—

By Mr. BICKFORD.—We object to that for the reason that it is leading and irrelevant and immaterial.

By Mr. MAYNARD.—Well, I will withdraw the question.

Q. Who asked you to go to see Mr. Zevely?

(Testimony of Albert Jemison.)

A. Mr. Griswold did.

Q. Now I will ask you, Mr. Jemison, if in this affidavit that you made there on March —at this time and place whether or not afterwards in the month of June, 1901, you did not appear as a witness before the federal grand jury in Helena?

By Mr. BICKFORD.—We object to that as being leading and as not being the best evidence of the facts sought to be adduced.

A. Yes, sir.

Q. Did you or did you not testify before that grand jury relative to this entire transaction?

By Mr. BICKFORD.—We object to that as being leading and as not being the best evidence of the facts sought to be adduced.

A. Yes, sir.

Q. You did testify? A. Yes, sir.

Q. Is it a fact that as a result of the investigation before the grand jury you were indicted and held to answer to a charge of subornation of perjury before the federal grand jury—before the Federal Court?

By Mr. WALSH.—We object to that because it is leading and upon the further ground that it is not the best evidence of the facts sought to be adduced and for the further reason that it is not permissible for counsel to cross-examine his own witness and further that the matter is immaterial.

A. Yes, sir.

(Testimony of Albert Jemison.)

Q. You were? A. Yes, sir.

Q. Did you appear before the Court to answer to that indictment?

By Mr. WALSH.—We object to that because it is leading and upon the further ground that it is not the best evidence of the facts sought to be adduced and for the further reason that it is not permissible for counsel to cross-examine his own witness and further that the matter is immaterial.

A. No, sir.

Q. You did not? A. No, sir.

Q. Were you after that?

A. I don't know as I understood that question.

Q. I say, did you appear before the Court?

A. Later on?

Q. Yes, sir. A. No, sir.

Q. You did not? Were you afterwards—was your case afterwards nolle prosequied, and you were discharged from custody and arrest on the motion of the government?

By Mr. WALSH.—We object to that because it is leading and upon the further ground that it is not the best evidence of the facts sought to be adduced and for the further reason that it is not permissible for counsel to cross-examine his own witness and further that the matter is immaterial.

A. Yes, sir.

Q. What is your answer? A. Yes, sir.

Q. You were? A. Yes, sir.

(Testimony of Albert Jemison.)

Q. So that you are now free from arrest?

By Mr. WALSH.—We object to that because it is leading and upon the further ground that it is not the best evidence of the facts sought to be adduced and for the further reason that it is not permissible for counsel to cross-examine his own witness and further that the matter is immaterial.

A. Yes, sir.

Q. Since you were discharged from custody I will ask you whether or not the affidavit which you made before Mr. Zevely on or about the 21st day of July, 1901, has not been read over to you in my presence and in the presence of Mr. Griswold and in the presence of others?

By Mr. BICKFORD.—We object to the question as being leading in the first place and in the second place because it is irrelevant and immaterial and third because it is not permissible for counsel to cross-examine his own witness and fourth because it is not redirect examination.

Q. What have you to say to that question, Mr. Jemison? A. Yes, sir.

Q. Did you not state after having read—having read over that affidavit and having examined it that all of the substantial statements in that affidavit were true? Did you not so state in our presence?

By Mr. BICKFORD.—We object to the question as being leading in the first place and in the second place because it is irrelevant and immaterial and third because it

(Testimony of Albert Jemison.)

is not permissible for counsel to cross-examine his own witness and fourth because it is not redirect examination.

A. Well, to those—I said it all right, the parts that I told you that I had overlooked—except the parts that I told you I had overlooked and hadn't made a thorough examination of them.

Q. Of mere clerical errors? A. Yes, sir.

Q. Simply little slight immaterial things that you called our attention to?

By Mr. BICKFORD.—We object to the question as being leading in the first place and in the second place because it is irrelevant and immaterial and third because it is not permissible for counsel to cross-examine his own witness and fourth because it is not redirect examination.

A. Yes, sir.

Q. And with that exception the affidavit which was read over to you and which you made out and swore to before Mr. Zevely being the same testimony that you gave before the grand jury was in every respect correct, was it?

By Mr. BICKFORD.—We object to the question as being leading in the first place and in the second place because it is irrelevant and immaterial and third because it is not permissible for counsel to cross-examine his own witness and fourth because it is not redirect examination.

A. Yes, sir.

Q. Now, I ask you if at any time in your life from the time that you first appeared before Mr. Zevely in Missoula on the 21st day of April, 1901; from that time up to the

(Testimony of Albert Jemison.)

meeting of the grand jury and during the taking of testimony before the grand jury when you appeared before them and testified or at any time since June, 1901, up till last Friday, the 13th day of December, 1901, did you ever say to any living person that there was any other arrangement than that which you testified to in your affidavit and before the grand jury and as you substantially said to us was correct when you arrived in Butte?

By Mr. BICKFORD.—We object to the question as being leading in the first place and in the second place because it is irrelevant and immaterial and third because it is not permissible for counsel to cross-examine his own witness and fourth because it is not redirect examination.

A. I cannot say that I understand what you mean.

Q. What I mean is—

A. You mean that I never denied those facts?

Q. Yes, sir, did you ever deny it? A. No, sir.

Q. You at all times admitted what you stated in effect to be true?

By Mr. BICKFORD.—We object to the question as being leading in the first place, and in the second place, because it is irrelevant and immaterial, and third, because it is not permissible for counsel to cross-examine his own witness, and fourth, because it is not redirect examination.

A. Yes, with the exception of the one or two parts we were talking about.

Q. And, which you corrected yourself in lead pencil did you not? A. I believe so.

(Testimony of Albert Jemison.)

Q. Did you ever say anything to Mr. Zevely; or did you ever say anything to me, or did you ever say anything to any living person connected with the government or with the witnesses that there was any idea or thought of a loan or any suggestion of the word loan was to be used, until you testified on cross-examination on Friday afternoon?

By Mr. WALSH.—We object to that for the reason that it is leading and because it isn't redirect examination and because it is not permissible for counsel to cross-examine his own witness and because it is irrelevant and immaterial, and upon the further ground that the affidavit itself would be the best evidence with reference to changes or corrections made as implied by the question.

Q. Now answer that question, Mr. Jemison.

A. I cannot say as I did.

Q. You cannot say that you did? A. No, sir.

Q. Now, on cross-examination counsel on the other side, Mr. Walsh, called your attention to the fact that immediately after the close of the session on Friday afternoon Mr. Zevely and myself had a conversation with you?

By Mr. WALSH.—Now, gentlemen, look here; I don't think that it is quite the right method of examination. We consented the other day that Mr. Zevely might examine this witness in the place of Mr. Maynard, Mr. Maynard being ill, and Mr. Zevely in his examination went all over these things with this witness and it doesn't seem to me that in view of the consent we gave with reference to this matter that this witness should be examined by other

(Testimony of Albert Jemison.)

counsel. It don't seem to me to be keeping our stipulation exactly right.

By Mr. MAYNARD.—Speaking for myself and my associate we feel like living up to our stipulation. I think after your attention is called to it you will recognize it. On Saturday I was sick with a very sick stomach and a bursting headache and that was the reason that Mr. Zevely examined this witness. I was not able to do it myself.

By Mr. WALSH.—No, but it doesn't seem to me to be fair for Mr. Maynard to be going over the same ground that Mr. Zevely went over with this witness relative to the entrymen and entrywomen involved in this case.

By Mr. MAYNARD.—I am just simply stating my position and going over the ground and asking a few questions relative to matters that he overlooked touching upon the same subject matter.

Q. And was it—wasn't the subject matter simply this: Is it not true that at once after the session closed on Saturday last that Mr. Zevely and myself went to you and asked you why it was that then for the first time you had used the word loan?

By Mr. WALSH.—We object to that, if your Honor please, first, because the question is leading; second, because it is irrelevant and immaterial, and third, because it is a reiteration of the examination that has heretofore been made of this witness concerning the same subject matter, and fourth, because it is not permissible for the counsel to cross-examine their own witness, and fifth, be-

(Testimony of Albert Jemison.)

cause the subject matter of the remark is incompetent, irrelevant and immaterial.

A. I don't know as I understand the question.

Q. Yes, you understand it, you understand the question perfectly well.

By Mr. WALSH.—We object to that.

Q. I want to have it appear upon the record that this particular witness is an adverse witness and that we use the rights and privileges that are accorded by the law in the examination of an adverse witness.

By Mr. WALSH.—We want to impose another objection and do insist that counsel has no right to cross-examine his own witness.

A. Just allow me to say one thing. In these other affidavits, if I understand right, there are lots of things in those other affidavits that isn't in mine and this talk that we had isn't in my affidavit.

By Mr. WALSH.—We desire to interpose an objection to the remarks of counsel and we also object to the reply of the witness because it is not responsive to the question there propounded by counsel.

A. I remember what I said; I remember them talking to me.

Q. You don't remember that. But don't you remember the question that I put to you and that question was put to you directly by us?

(Testimony of Albert Jemison.)

A. When we was talking together; when you were talking to me?

Q. Last Friday afternoon in the courtroom wasn't that question put to you?

By Mr. WALSH.—We desire to object to the remarks of counsel and we desire to further object to the question propounded for the reason that it is irrelevant and immaterial to any of the issues in this case.

A. Yes, sir, it was, but I thought you meant that you asked me that.

Q. Did you not then say "I will tell you about it"; and did you not go then to the Thornton hotel in the city of Butte and there tell us about it?

A. I believe I did.

Q. And did you not in that conversation which you had with us in the lobby of the Thornton Hotel, in the large room on the first floor of the Thornton Hotel tell us this in explanation of why you had used the word loan for the first time. That you had been working for a long time under the Griswold contract by which each and every person that you located distinctly understood that they were to locate on that particular description which you had previously selected for them with the distinct understanding that they were to take that slip of paper to Cobban and Dinsmore's offices in Missoula and they were at once after they had made their final proof to convey to him for and in consideration of the sum of one hundred dollars and their expenses the land covered by their location. And did you not also state

(Testimony of Albert Jemison.)

that you had made all of the locations under the Griswold contract with the distinct understanding that you were to be paid for that?

By Mr. WALSH.—We object to that for the reason that it is leading and that it is not proper redirect examination and further that it is irrelevant and immaterial to the issues in this case and is a declaration made by this witness in the absence of the defendant and in the absence of his counsel and is an evident attempt upon the part of the counsel for the government to cross-examine his own witness.

A. Yes, sir.

Q. Did you not further tell us that after you had finished the work under the Griswold contract that you did the same work under the same conditions for about a month or so for Mr. Cobban himself?

By Mr. WALSH.—We object to that for the reason that ie is leading and that it is not proper redirect examination and further that it is irrelevant and immaterial to the issues in this case and is a declaration made by this witness in the absence of the defendant and in the absence of his counsel and is an evident attempt upon the part of the counsel for the government to cross-examine his own witness.

A. Well, now, if I understand it right, I said that it was after me and Mr. Cobban had this talk about the land after I had this talk as I have stated in the answer I have just made.

(Testimony of Albert Jemison.)

Q. Did you not tell us that you had worked for Mr. Cobban about a month before you had the conversation with him in regard to this land under the same terms that you had worked for Mr. Griswold?

By Mr. WALSH.—We object to that for the reason that it is leading and that it is not proper redirect examination and further that it is irrelevant and immaterial to the issues in this case and is a declaration made by this witness in the absence of the defendant and in the absence of his counsel, and is an evident attempt upon the part of the counsel for the government to cross-examine his own witness.

A. I won't say that I didn't.

Q. And did you not tell us then that after you had worked for a month under the same arrangements with Mr. Griswold, that Mr. Cobban came to you and said "look here" and use these identical words—he had been put upon the law or something—that he said "look here, we have got to run this thing differently; we have got to run this thing differently from this time on in doing this work. We will continue it and run it just the same way, we will give it out that Mr. Cobban is willing to make a loan to these people, but we will only locate the people whom we can trust and with the distinct understanding that they are to receive their expenses and a hundred dollars just the same as these other locations have been made"?

By Mr. WALSH.—We shall object—

(Testimony of Albert Jemison.)

By Mr. MAYNARD.—I should think that you would—

Mr. WALSH (Continuing).—As leading and upon the further ground that it is immaterial and irrelevant and an effort upon the part of counsel for the government to cross-examine the government's own witness and as an endeavor to incorporate into the record statements made by the witness outside of the court and in the absence of counsel and is an effort to give the conversation had between the witness and the counsel and is the counsel's own statement of what transpired between the counsel and the witness rather than the testimony of the witness as to what did transpire.

A. Well, I don't just understand it that way. Of course, as to the instructions that he gave me and the loan and the payment of a hundred dollars, I can say yes to it as it is represented there, I don't remember.

Q. Well, do you mean by that that the substance of the question I last put to you is true?

By Mr. WALSH.—We shall object as leading and upon the further ground that it is immaterial and irrelevant and an effort upon the part of counsel for the government to cross-examine the government's own witness and as an endeavor to incorporate into the record statements made by the witness outside of court and in the absence of counsel and is an effort to give the conversation had between the witness and the counsel and is the counsel's own statement of what transpired between

(Testimony of Albert Jemison.)

the counsel and the witness rather than the testimony of the witness as to what did transpire.

A. I don't deny saying that, but if I understand it right it is a little different from what I said.

Q. But the substance of it—did you say, the body of it is true or not?

By Mr. WALSH.—We shall object as leading and upon the further ground that it is immaterial and irrelevant and an effort upon the part of counsel for the government to cross-examine the government's own witness and as an endeavor to incorporate into the record statements made by the witness outside of the court and in the absence of counsel and is an effort to give the conversation had between the witness and the counsel and is the counsel's own statement of what transpired between the counsel and the witness rather than the testimony of the witness as to what did transpire.

A. It is true, but not as represented.

Q. But the substance of it is true, is it not, Mr. Jemison?

By Mr. WALSH.—We shall object as leading and upon the further ground that it is immaterial and irrelevant and an effort upon the part of counsel for the government to cross-examine the government's own witness and as an endeavor to incorporate into the record statements made by the witness outside of court and in the absence of counsel and is an effort to give the conversation had between the witness and the counsel and is the

(Testimony of Albert Jemison.)

counsel's own statement of what transpired between the counsel and the witness rather than the testimony of the witness as to what did transpire.

A. Yes, sir.

Q. Yes, sir; now, I will ask you one or two other questions, Albert, and then I will be finished. Did you not in your affidavit which was made by you at the time that I have called your attention to when you had the meeting with Mr. Zevely about April 21st, and during all of the subsequent times that this affidavit had been called to your attention, did you not so swear at that time and since that it was true that Mr. Cobban paid you an average of twenty-five dollars per claim, all except two claims and for these he paid twelve dollars and a half each. "I told these people that Mr. Cobban would buy them for a hundred and ten dollars above all expenses—for a hundred dollars above expenses and they were to make a deed to Mr. Cobban right away"?

By Mr. WALSH.—Now, if your Honor please, if the witness is to be interrogated as to anything he may have said in an affidavit he should be shown the affidavit and counsel have a right to examine it.

By the EXAMINER.—Yes, he has a right to look at the affidavit.

By Mr. MAYNARD.—I have just a memorandum of it here. I will withdraw the question because I haven't just now the original affidavit in my possession, but I

(Testimony of Albert Jemison.)

have the affidavit which has been used all the time during this examination.

Q. That is a fact, is it not?

By Mr. WALSH.—We object to requiring the witness to testify at all unless we have an opportunity to examine the affidavit.

By Mr. MAYNARD.—I have withdrawn the question.

Q. Is it not true, Albert, that Mr. Cobban paid you on an average twenty-five dollars per claim all except the two claims heretofore mentioned and for those he paid you twelve dollars and a half each?

By Mr. WALSH.—Now, we object, if your Honor please, on the ground that it is leading and upon the further ground that it is irrelevant and immaterial and third, upon the ground that it is interrogating the witness concerning a transaction between the witness and R. M. Cobban who is not a party to the action and therefore that it is irrelevant and immaterial.

A. Yes, sir.

Q. And is it not true that you told each of these people that you located under this contract with Mr. Griswold and under the contract with Mr. Cobban and that they were to receive the money that you have testified that you say you told them they were to receive, but the condition was that they were to deed the land to Mr. Cobban right away?

By Mr. BICKFORD.—We object to the question for the reason that it is leading; secondly, upon the ground

(Testimony of Albert Jemison.)

that it is immaterial and irrelevant to the issues in this case, and third, because it is hearsay testimony and asks the witness to confirm a conversation between himself and some outside party that is not a party to the record.

A. Well, there is some people that I never had a talk with about it; it was understood that way.

By Mr. WALSH.—We move to strike out the last part of the answer for the reason that it is not responsive to the question, referring to the statement of the witness that "It was understood that way."

Recross-examination.

(By Mr. WALSH.)

Q. What do you know about what Elvira Hardy understood? A. Well, I cannot say.

Q. Did you ever talk to Elvira Hardy about conveying her claim? A. No, sir.

Q. Do you mean to say that she understood she was going to convey her claim?

A. Well, that was my meaning, yes, sir.

Q. That was your meaning? A. Yes, sir.

Q. That is, you had the same meaning with all the rest of these parties that you had with reference to Elvira M. Hardy? A. Yes, sir.

Q. When you say it was understood, you mean it was understood with all the rest of them, then, the same as it was with Elvira M. Hardy?

A. Well, I said I didn't talk with them about that.

(Testimony of Albert Jemison.)

Q. You told me upon cross-examination the other day what you said about it, about each and all of them in this matter.

A. I don't remember about each one of them; there was some of them that I had hardly any talk with at all.

Q. Now, the same understanding, I suppose, was had with John H. Hardy?

A. Well, I don't just understand.

Q. I thought very likely you didn't. What I mean by this—

A. I understood it this way, that if they went and took these claims up and sold to anybody, why that was my idea, that it was their intention when they started in.

Q. That is what you mean by the understanding, is it?

A. That those parties were to do so, that is what I said I understood.

Q. You don't mean to say that you had any talk with John H. Hardy, in the course of which he told you that he was going to convey the land to Mr. Cobban?

A. No, not with Mr. Hardy.

Q. Didn't I ask you about each one of these and didn't you say that the only one you had any talk with was Mr. Hendryx? A. I believe so, yes.

Q. What have you to say concerning any understanding with Simon F. Cobban, to the effect that he was going to convey? What you spoke of as an understand-

(Testimony of Albert Jemison.)

ing applies as well to Simon F. Cobban as to all the rest of these people? A. I believe it does.

Q. And to Elvira M. Hardy? A. Yes, sir.

Q. And to John H. Hardy? A. Yes, sir.

Q. You located Mr. O. C. Clark at or about the time you located Mr. Simon F. Cobban, didn't you?

A. Yes, sir.

Q. Mr. Clark was a Congregational minister of Missoula, was he not? A. Yes, sir.

Q. Officiating clergyman at that time?

A. Yes, sir.

Q. What have you to say about any understanding with Mr. Clark? The same thing applies to him, I suppose.

A. I don't know, only I located him for Mr. R. M. Cobban.

Q. Well you know just as much about an understanding with Mr. Clark as you do about an understanding with Mr. John H. Hardy, don't you?

Mr. ZEVELY.—I object to this question because counsel assumes that Mr. Clark and John H. Hardy and Mrs. Hardy were two of the parties with whom Mr. Jemison on his redirect examination on Saturday last testified he had the understanding. Their names were not mentioned, and only the names of such citizens as he had been a witness for.

By Mr. WALSH.—To which statement of counsel for the government, counsel for the defendant responds, that

(Testimony of Albert Jemison.)

in the redirect examination of the witness it was stated by counsel and replied to by the witness that the same state of facts existed with reference to all of the entrymen as to the entrymen concerning whom he had testified with particularity.

A. For the two I will withdraw it.

Q. Now, if you want to give any other answer, do so.

A. That is all.

Q. Now, Mr. Jemison, you told, didn't you, the other day, upon your direct examination, in response to a question put to you by Mr. Maynard about this conversation had with Mr. Cobban, in which he told you that the money that was advanced to these people was to be by way of a loan. Before I examined you at all, didn't you?

A. I don't just understand that.

Q. No. Do you remember who first questioned you on this hearing about these matters after you were sworn as a witness in this proceeding?

A. Mr. Zevely, I believe, and Mr. Maynard was present.

Q. Do you remember when you began to give your testimony in this hearing, what day it was?

A. Friday, I believe, in the afternoon.

Q. Friday. Who first put the questions to you upon this examination? A. Mr. Maynard did.

Q. Now, that is what I want to get from you, Mr. Jemison, whether you didn't tell about this conversation with Mr. Cobban, in which Mr. Cobban told you that any money advanced to these people must be by way of a loan to them, and that you must make no bargain to buy their claims—

(Testimony of Albert Jemison.)

in answer to a question put to you Friday afternoon by Mr. Maynard? A. Yes, sir, I did.

Q. So it was not, as a matter of fact when you were first cross-examined by myself when you first told about this? A. I don't believe it was.

Q. It was in that same connection that you stated, did you not, that Mr. Cobban said something about the necessity of locating people only that could be trusted?

A. I just cannot say about that.

Q. Cannot say about that? Well, did Mr. Cobban ever say anything of the kind?

A. Well, I believe he did.

Q. Well now, what did he say?

A. I cannot just exactly repeat it.

Q. Cannot repeat it? A. I believe I did once.

Q. What is your answer, Mr. Jemison?

A. If I ain't mistaken I believe he told me that when he told me about this land.

Q. Well, that is what I want to know, what he said about it, as nearly as you can recollect.

A. I may have been a little wrong. He said that people—that we were to know the people that we were doing business with, or something similar to that, at the time we talked about the loan part of it.

Q. Now that conversation was had with Mr. Cobban at the time you went to work for him directly, was it not?

A. I just can't say about that.

Q. Well, do you mean to say that you had located any people under any agreement with Mr. Cobban before he

(Testimony of Albert Jemison.)

told you that you were not to make any bargain with the people to buy their claims, and isn't it a fact that Mr. Cobban gave you those instructions when he employed you to work for him?

A. Well, if I understand it right, I took it this way: I was working for Mr. Cobban at the time and got my pay from Mr. Griswold.

Q. You got your pay originally, however, from Mr. Griswold, didn't you?

A. I don't know how you would take it. I got an order from Mr. Cobban for my pay.

Q. You told us the other day that you first went to work for Mr. Griswold? A. Yes, sir.

Q. And didn't you present a paper here which showed a large number of persons that you had located under the agreement that you had with Mr. Griswold?

A. Yes, sir.

Q. And didn't you tell us subsequently that you made an agreement with Mr. Cobban to locate people for him?

A. Yes, sir.

Q. Now that is what I want to know from you, whether it isn't a fact that at the time you made an agreement with Mr. Cobban that you should go to work locating people upon the claims directly for him that then and there he told you that you must not make any bargain to buy these claims from the people, but the money was to be advanced by way of a loan?

A. If I understood it right, Mr. Griswold was Cobban's

(Testimony of Albert Jemison.)

agent during the time that I was working for either of them.

Q. Yes, I understand that; I understand you clearly about that, but didn't you tell us that you worked under employment for Mr. Griswold for a while, and made reports to Mr. Griswold, and reported to Mr. Griswold the names of the parties whom you had located, and then afterwards made an agreement—direct agreement by which you worked for Mr. Cobban; didn't you say so?

A. I believe I did, yes, sir.

Q. Now, Mr. Jemison, I wish you would answer my question, as to whether at the time that Mr. Cobban hired you to go to work for him—the time Mr. Cobban hired you to go to work for him, when you ceased making any reports to Mr. Griswold, but settled with—settled your affairs with Mr. Cobban for the people that you located. Was it that time Mr. Cobban told you so?

A. Well, I couldn't say about that, I had several claims, I believe, that Mr. Cobban had taken which was proved up on that Mr. Griswold didn't take.

Q. Did you understand the question I put to you, Mr. Jemison?

Mr. MAYNARD.—Sure he does, and the answer is direct.

Q. You understand the question I put to you, Mr. Jemison? A. I believe I do.

Q. Well, you haven't—

A. Well, as I understand it, these claims were located and proved up in sixty days. Well, we never got any pay

(Testimony of Albert Jemison.)

for them until they were proved up on. If I understand it right, I had several claims that Mr. Cobban paid me for that I worked on before, you see.

Q. Yes, I understand clearly about that, but, Mr. Jemison, according to your testimony here you did work for some time under employment of Mr. Griswold, and the parties that you located you reported to Mr. Griswold, and expected to get your pay from him?

A. So I did. I reported to Mr. Griswold and got paid for it.

Q. And subsequently you began to work for Mr. Cobban, and you reported to Mr. Cobban, and had your settlement with Mr. Cobban without anything at all to do with Mr. Griswold, isn't that a fact?

A. I did after I went to reporting to Mr. Cobban, yes, sir.

Q. That is what I want to know.

By Mr. MAYNARD.—That you did what?

A. You see claims were located ahead sixty days before they were reported—that is, for payment.

Q. I understand, Mr. Jemison, perfectly well that the final proof on a good many of the claims that you located for Mr. Griswold hadn't been perfected when you went to work for Mr. Cobban.

A. Yes, but Mr. Griswold hadn't paid me for all of them.

Q. I understand, but that isn't what I was talking to you about. I didn't ask you about final proof, I was talking about putting people on the land. Didn't you first

(Testimony of Albert Jemison.)

begin to put people on the land under an agreement with Mr. Griswold? A. Yes, sir.

Q. And didn't you subsequently put people on the land under an agreement which you had directly with Mr. Cobban, so that you looked to Mr. Cobban for the pay and not to Mr. Griswold?

A. Why I did after we made this agreement.

Q. Well, that is just exactly what I wanted to know from you. Wasn't it at that time when you made an agreement with Mr. Cobban that you were to put people on to the land. Wasn't it at that time that Mr. Cobban told you you must not make any agreement to buy these claims from people?

A. I believe it was, yes, sir.

Q. That is what you told us, and I don't see why it should take so long to get at it. Now, Mr. Jemison, I want to know who you first located under that contract.

A. I couldn't say, I don't know which was the first one. I will withdraw that answer, too. I think there were some locations back of mine there. I may be wrong, but if I have got the right memory, there was some which I got from Mr. Cobban. I couldn't say for sure about that.

Q. Well, you don't mean to say that any parties that you located for Mr. Griswold, you didn't charge up to Mr. Cobban in your account with him, did you?

A. I didn't tell Mr. Griswold when I quit him at all, didn't tell him anything about it.

Q. No, but you were employed by Mr. Griswold, weren't you?

(Testimony of Albert Jemison.)

A. Yes, sir; to start in with, I was.

Q. And didn't you charge Mr. Griswold for every person and didn't you get pay from him for every man that you located while you were working under him?

A. I am not sure, but—

Q. Well, which of these people does Mr. Griswold still owe you for?

A. Neither one of them owes me a cent.

Q. In other words, every man that you located under an agreement with Mr. Griswold, and every man you turned in to Mr. Griswold, he paid you for, didn't he?

A. Yes.

Q. And every man and every woman that you located under an agreement with Mr. Cobban you turned in to Mr. Cobban, and Mr. Cobban paid you for it, didn't he?

A. Yes.

Q. But you don't know which one you first located for Mr. Cobban, under the agreement with Mr. Cobban?

A. I couldn't answer the question positively.

Q. Under which did you locate Elvira M. Hardy?

A. You mean what lands?

Q. No, under which agreement, the agreement you had directly with Mr. Cobban, or the agreement you had directly with Mr. Griswold?

A. I located her under the agreement I had with Mr. Cobban.

Q. And how about John H. Hardy?

A. I believe so.

Q. The same under the agreement with Mr. Cobban?

(Testimony of Albert Jemison.)

A. Yes, sir.

Q. And Mr. Simon F. Cobban? A. Yes, sir.

Q. Under the agreement with Mr. Cobban?

A. Yes, sir.

Q. And Mr. Clark? A. Yes, sir.

Q. Under the agreement with Mr. Cobban, didn't you?

A. Yes, sir.

Q. At the time that you located those people you were working under an agreement with Mr. Cobban, weren't you?

A. At the time I located them?

Q. Yes, sir. A. Yes, sir.

Q. And as a matter of fact they were the first that you located under your agreement with Mr. Cobban?

A. Well, I don't say just positive about that. I believe I did, but I won't answer positive; but I won't say positively, because my recollection isn't full in this business—I can't remember.

Q. But anyway, after you had been putting people on the lands under your agreement with Mr. Cobban, you didn't any longer put people on the lands under your agreement with Mr. Griswold, did you?

A. I won't say for certain about that. I believe Mr. Griswold claimed one or two of the parties. I won't say for certain.

Q. Might have been one or two?

A. There might have, yes.

Q. Well, you weren't putting people on the land at

(Testimony of Albert Jemison.)

one and the same time directly from Mr. Cobban, and directly from Mr. Griswold, were you?

A. Yes, sir, I can't say as I didn't.

Q. Can't say that you did or did not?

A. No, sir.

Q. Isn't it a fact that you quit working under the Griswold contract and went to work directly for Mr. Cobban?

A. Well, not exactly. I thought I could work for either one of them.

Q. How much did Mr. Cobban pay you, did you say?

A. Twelve dollars and a half for two, I believe, and twenty-five dollars for the other. I won't say for certain. There might have been a difference in the others that were made.

Q. Mr. Griswold paid you ten dollars, you say?

A. Yes, sir. And for some he paid me more.

Q. How much more did he pay you?

A. Fifteen dollars for some.

Q. And you say you would take ten dollars from Mr. Griswold and twelve dollars and a half and twenty-five dollars from Mr. Cobban?

A. That is when he made the claim.

Q. And Mr. Griswold made some claim that he had located some of these people on the ground, did he?

A. Yes, sir.

Q. And claimed the pay for locating them from Mr. Cobban?

(Testimony of Albert Jemison.)

A. Well, I couldn't say about that, I believe I understood it that way.

Q. And then you went in and consented to agree that they were locating under your contract with Mr. Griswold? A. I don't understand.

Q. That is, when you located some of them, Mr. Griswold was claiming pay from Mr. Cobban for these locations, and it was then that you agreed with Mr. Griswold that they should be considered as locations under his contract, didn't you?

A. Under the Griswold contract?

Q. Yes.

A. Some of them, I believe, yes, sir.

Q. But anyway you located the two Hardys and Bryan for Cobban and some more, under your arrangement with Mr. Cobban?

A. Yes, sir, and believe some more.

Q. And some more? A. Yes, sir.

Q. And it was at or about the time that Mr. Cobban told you, admonished you, not to make any agreement for the purchase of these lands?

A. Yes, sir, I believe it was about that time.

Q. How many final proofs had been made at that time with reference to these matters?

A. I cannot say about that.

Q. Had there been one?

A. Well, after they were filed it was sixty days before final proofs were taken.

Q. Well, who had you handled and located at all in

(Testimony of Albert Jemison.)

the making of final proofs before this—Elvira M. Hardy and J. H. Hardy?

A. I couldn't say.

Q. Now, Mr. Jemison, for the purpose of refreshing your recollection about this, I show you the sworn statement and application of Elvira M. Hardy. Just look at it, it is dated August 31st, 1899.

(Paper handed to witness.)

A. Yes, sir.

Q. Well, now that your recollection is refreshed from this statement, do you think that it is about the time you located her? What have you to say, Mr. Jemison?

A. Is that the date when she proved up or when she filed?

Q. Well, you can look at it for yourself, Mr. Jemison. I told you it was her application, her sworn statement. I don't want to mislead you at all.

A. I don't believe I located her on that day.

Q. You don't believe you did? A. No, sir.

Q. Well, was it before or after this date?

A. Well, it was before; must have been.

Q. According to your recollection it was at least a few days before August 31st, 1899, that you located Elvira M. Hardy? A. Yes, sir.

Q. Well, now, in making that, you made a final proof—did you, in making final proof, under any location that you made, or assist in making?

A. I couldn't say.

(Testimony of Albert Jemison.)

Q. Have you any recollection of anybody that did?

A. I couldn't say that.

Q. Well, you can say whether you have a recollection or not, can't you?

A. Well, I couldn't say as to that.

Q. When did you make your final proof?

A. I couldn't just say as to that—the date, sir.

Q. I show you your final receipt, dated September 22d, and your proof before the land office, dated the same date. And ask you now whether your final proof was not made on or about September 22d, 1899, Mr. Jemison?

By Mr. MAYNARD.—I desire to object to this question, because it is irrelevant and immaterial, and because it don't make any difference whether this agreement was made prior to the making of final proof in any of these cases.

A. I believe that they are the right dates.

Q. And you and your father were the first ones that you located under either of these contracts, either with Mr. Cobban or with Mr. Griswold?

A. I believe so, yes, sir.

Q. Well, now, what have you to say now as to whether the final proofs of any of those people that you assisted in any way in locating, was made prior to the 31st day of August, 1899, when Elvira M. Hardy made her original sworn statement and application?

A. If any of these parties was made before her?

Q. Yes, before the 31st day of August when she filed.

(Testimony of Albert Jemison.)

Yours wasn't made until the 22d day of September following, was it, some three weeks after Elvira M. Hardy filed. Answer the question.

By Mr. MAYNARD.—I desire to object to this question also, for the reason it is irrelevant and immaterial, and because it doesn't make any difference whether this agreement was made prior to the making of final proof in any of these cases or not.

A. I don't understand them papers.

Q. Why you understand that this is the sworn statement and application of Elvira M. Hardy, don't you?

A. Yes, sir.

Q. And you understand it was made the 31st day of August, 1899, don't you?

A. Yes, I understand that.

Q. And you understand that your proof was made the 22d day of September, 1899? A. Yes, sir.

Q. And you understand that was three weeks after Elvira M. Hardy filed, don't you?

A. Three weeks after she filed?

Q. Yes, about three weeks after she filed you made your proofs?

A. Well, I cannot say. I believe them papers know more about it than I do.

Q. You can say how long it was from August 31st, until September 22d, can't you?

A. I don't know as I could right at once, no, sir.

Q. Did you know any of these people that made final proof before you did?

(Testimony of Albert Jemison.)

Mr. MAYNARD.—We object to that as being immaterial and irrelevant.

Q. Any of the people that you located or assisted in locating, that made final proof before you did?

A. I cannot say, but I believe there was people that made final proof before I did.

Q. After you located?

A. No, sir, I cannot say that.

Q. Any of these people that you located or assisted in locating that made final proof before you made final proof?

By Mr. MAYNARD.—We object to that as being immaterial and irrelevant.

A. I couldn't say as to that.

Q. As a matter of fact, Mr. Jemison, all of these people that you assisted in locating made final proof after you did, didn't they?

By Mr. MAYNARD.—We object to that as being immaterial and irrelevant.

A. I couldn't say.

Q. Who was the first that you located, yourself and your father? You and your father were the first making final proof, were you not?

A. I cannot answer that.

Q. When—you don't know any of them that made final proof before August 31st, 1899, is that what you mean?

(Testimony of Albert Jemison.)

By Mr. ZEVELY.—Objected to as immaterial and irrelevant; and in the second place, because the record is the best evidence of the fact sought to be adduced.

A. I cannot answer that.

Q. Now, you told counsel that it was at Mr. Griswold's solicitation that you went to see Mr. Zevely, in April last, is that correct? A. Yes, sir.

Q. What is that? A. Yes, sir.

Q. I wish you would tell us about that? How did that come about?

A. He came up there and wanted me to go down as a witness to Missoula; wanted to know if I would go and I told him I would.

Q. Well, that doesn't mean very much. He must have said something more than that. He must have said something about like this, that he wanted you to make an affidavit. You wouldn't know what he wanted, or what he meant if he should have simply said that.

A. Well, I don't know as I did know what he meant. I didn't know whether it was on the trial of a lawsuit he had with Mr. R. M. Cobban, or what it was, until we got on the road.

Q. What did he say then?

A. He said we were going before Zevely.

Q. Well, what—who did he say Zevely was?

A. I believe an agent of some kind for the Government.

Q. Well, couldn't you go on, Mr. Jemison, and tell

(Testimony of Albert Jemison.)

us just exactly what was said between you and Mr. Griswold about this matter?

A. Well, I don't know, I am sure.

Q. I should think you could go on and tell about this. Do so, please.

A. I don't know as I care to tell it.

Q. Well, I rather insist that you should, Mr. Jemison. I desire you to tell what Mr. Griswold said about this matter.

A. Well, he didn't say much of anything to me.

Q. Well, what is it that you don't care to tell?

A. Well, this conversation, I don't believe that this is fair for me to talk to everybody that should come in this case.

Q. Well, we think that your talk with Mr. Griswold on this particular occasion is competent here, and I want to know what was said to you.

A. Well, he told me he was going before Zevely. I asked him who he was, and he said he was an attorney, I believe, for the United States, or something like that; I believe that is about all.

Q. Well, you have no hesitancy about telling that, have you? A. I don't just remember.

Q. Well, give us your best recollection of what was said?

A. Well, I believe that is all I can remember of.

Q. That is all. Is that all you can remember?

A. I believe so.

Q. Well, are you sure?

(Testimony of Albert Jemison.)

A. Well, no, I can't be sure.

Q. Well, you can be sure as to what you can remember, can't you? I will ask you if you are sure you don't remember anything else? A. I cannot say.

Q. You cannot say whether you are sure or not? Well, do you now recall anything else that Mr. Griswold said to you about this matter of your making an affidavit or giving any testimony?

A. I don't understand you.

Q. I ask you if you now recall—remember anything that Mr. Griswold said to you about the matter of giving testimony, except that you were going to Missoula to make an affidavit before Mr. Zevely, who was an agent or an attorney of the United States? Do you remember anything else that he said?

A. I don't remember as I do.

Q. Well, what did Mr. Griswold want you to go for; why did he want you to go at all?

A. I don't know as I knew myself, then.

Q. Well, do you now? A. Yes, sir.

Q. Well, what do you know about it now?

A. I know I gave the affidavit.

Q. No, the question is, why did Mr. Griswold want you to go there?

A. Well, I don't know as I just could answer that.

Q. Don't know? What did he say about it?

A. I don't just remember.

Q. What, if anything, did Mr. Griswold say about what you were to get out of this?

(Testimony of Albert Jemison.)

A. I don't remember as he did, no, sir.

Q. Well, do you remember that he did not?

A. I remember that I never got nothing out of it.

Q. That wasn't the question, Mr. Jemison. The question is what did Mr. Griswold say to you?

A. Well, this transaction has been a long time ago, and I don't believe I can swear to it.

Q. It isn't any longer ago than any of these other transactions, is it?

A. Well, there is a whole lot of transactions here, and I am only swearing to the best of my knowledge.

Q. Well, that is what I want you to do with reference to this. I want you to tell according to your best recollection what it was Mr. Griswold said you were to get out of this.

A. Well, I cannot say as he said that.

Q. Well, what did he say about the matter?

A. I couldn't say.

Q. Couldn't say. Well, you have told people repeatedly, haven't you, what Mr. Griswold did say; what you were going to get out of this, when you were going down to make this affidavit.

A. Yes, sir, when I wasn't under oath.

Q. Well, what did you say when you were not under oath, about the matter?

A. Well, I don't know as I could remember that.

Q. Well, tell it as you remember it.

A. I don't know as I can say.

Q. Well, why can't you say?

(Testimony of Albert Jemison.)

A. Because I don't just exactly remember.

Q. Well, I don't want you to remember exactly; but I want you to tell it as you remember it, whether it is exact or otherwise? A. I can't say.

Q. Well, I want to know what Mr. Griswold told you you were to get out of this? A. I cannot say.

Q. Well, you told your father all about this, didn't you? A. My father?

Q. Yes, sir.

A. I don't remember whether I did or not.

Q. Well, didn't you, as a matter of fact, tell your father at the time you went down to Missoula, or subsequent to that, that Mr. Griswold said he would endeavor to collect this of Mr. Cobban, and if he could get it he would pay you five hundred dollars?

A. I don't remember whether I told my father that or not; he would know if I did.

Q. Well, isn't your recollection as good as your father's? A. I couldn't say as to that.

Q. You wouldn't swear that you didn't say that to your father, shortly after the time you went down to Missoula with Mr. Griswold, at your home upon the Clearwater? A. I wouldn't swear either way.

Q. Well, as a matter of fact, you told Mr. Cobban so, did you not—in the presence of Mr. Pond, shortly after that time, and at or about the time of the trial between Mr. Cobban and Mr. Griswold, that Mr. Griswold had promised you that if you would come down there and make that affidavit, concerning which you have

(Testimony of Albert Jemison.)

been interrogated, that he would give you five hundred dollars, and that he didn't pay it to you?

A. I can't say whether I did or not.

Q. Well, it was a fact Mr. Griswold did say so, wasn't it? A. Can't say that.

Q. Can't say that? Why can't you say it?

A. I cannot say neither way, but I don't remember anything about the five hundred dollars.

Q. Don't you remember anything about the five hundred dollars?

A. I won't say either way, but that is my answer.

Q. Did he say anything about any amount?

A. Can't say.

Q. Well, were you drunk, Mr. Jemison?

A. I don't care to answer that.

Q. Well, is that the reason why you don't know, or you don't care to answer?

A. I don't believe I can answer that.

Q. Well, you were intoxicated at the time you made this affidavit concerning which you have been interrogated this morning, weren't you?

A. I couldn't say that. I don't deny but what I was drinking liquor.

Q. Well, you have told people repeatedly that, haven't you? A. I can't answer that very well.

Q. Why can't you; you told Judge Bickford so, didn't you? A. What did I tell him?

Q. That you were intoxicated at the time you made that affidavit?

(Testimony of Albert Jemison.)

A. I don't remember in that way, no, sir.

Q. What is that?

A. I don't remember telling him that way.

Q. Well, didn't you tell him that you were full of drink, or something in substance to that effect?

A. I was drinking, I believe I told him; I don't remember using "intoxicated" at all.

Q. Well, didn't you use some language that indicated that?

A. I believe I did tell him I was drinking, yes, sir.

Q. And didn't you tell him in substance that you had been drinking so much that you didn't really know what you put in that affidavit?

A. I don't remember about that.

Q. Don't remember about that, did you say; don't remember about that? A. No, sir.

Q. Well, didn't you tell Mr. Cobban the same thing, in effect?

A. I believe I talked some with Mr. Cobban, although I don't remember.

Q. Did you tell Mr. Hershey that in effect?

A. I don't remember that.

Q. And didn't you tell each and all of those gentlemen that that affidavit wasn't true in all respects; that there were a great many things in it that were not true, and were not as you had said, and that you had asked these gentlemen to strike it out and they refused to do so? A. I cannot answer that.

(Testimony of Albert Jemison.)

Q. Cannot answer that? Why cannot you answer it?

A. Because I believe there is a whole lot of people know more about it than I do, the questions you are asking me.

Q. You cannot remember whether you did or did not say that to these gentlemen? A. No, sir.

Q. At any time or place, is that correct?

A. I cannot say whether I did not or whether I did.

Q. Now, have you got a copy of that affidavit?

A. No, sir, I have not.

Q. How many were made? A. I don't know.

Q. How many did you sign?

A. I couldn't say about that; there was—I believe it was only considered one, it was all pinned together.

Q. Didn't you say in the course of your testimony that you had a copy of this, and that it didn't agree with the copy these gentlemen had?

A. I don't remember whether I said that or not. If I did, I would like to recall it.

Q. Now, can you tell us the conversation you had with Mr. Zevely and Mr. Maynard, on Friday last, concerning which you were asked this morning; the conversation had in the courtroom in Butte, after the adjournment, and at the Thornton hotel?

By Mr. MAYNARD.—I object to the question put to the witness, and to the answer he may make, solely upon the ground that it has already been gone over with on the part of counsel for the defendant.

(Testimony of Albert Jemison.)

A. I don't believe it is fair for me to answer anything two or three times. I believe I went over that.

Q. Will you answer this question? Can you tell us what that conversation was?

A. I don't remember just exactly; I don't care to repeat it a second time.

Q. You don't remember just exactly what the conversation was? A. No, sir.

Q. Don't remember what you said?

A. I repeated it once, to the best of my recollection.

Q. When did you say that?

A. Some time here.

Q. Did you say anything about it this morning?

A. I believe I did.

Q. What did you say about it this morning, you said "yes" and "no," "don't remember." Did you say anything this morning besides "yes" and "no" concerning that conversation?

A. I couldn't say whether I did or not.

Q. But you won't answer anything further about it; you won't tell us what you said and what Mr. Maynard and Mr. Zevely said in that conversation?

A. I don't believe I could repeat it over, no, sir.

Q. Neither in words or in substance?

A. No, sir.

Q. Where were you in Missoula when this affidavit was made? A. In the Missoula hotel.

Q. Who was present at that time?

A. Mr. Zevely, a stenographer and Mr. Griswold

(Testimony of Albert Jemison.)

and myself, I believe, and Mr. Tom Bryan was around there. Whether he was in the room or not, I couldn't say.

Q. Who was the stenographer?

A. He was the stenographer of the court, I don't know his name. There are other parties in the room who know his name.

Q. The court stenographer?

A. Yes, sir. He was afterwards—I don't know as he was then, but afterwards I seen him working in the courtroom .

Q. How long were you there?

A. I just couldn't say, I presume half an hour or an hour.

Q. When did you come back again, or were you there only once?

A. I was only there once, at the Missoula hotel.

Q. And you were at the hotel about an hour, did you say?

A. Half an hour, or an hour or an hour and a half, I couldn't say.

Q. What machine did the stenographer have there?

A. I couldn't say.

Q. You couldn't say whether he had a machine or not? A. No, sir, I didn't see any.

Q. Was the affidavit already—typewritten or in longhand?

A. It was first in longhand and then—well, I couldn't say to that for sure. I think it was taken down

(Testimony of Albert Jemison.)

in shorthand first, and then the stenographer wrote it off.

Q. And did you come back again to sign it?

A. Yes, sir.

Q. How long after?

A. Well, while I was in the hotel.

Q. Waited a half an hour?

A. Well, I don't say as to the time. I signed it when I was in the hotel first. I don't think I left the hotel, I wouldn't say for certain.

Q. Was it read over to you? A. Yes, sir.

Q. When was it read over to you?

A. When I came back.

Q. I understood you you were only once at the hotel?

A. At the hotel?

Q. Yes. A. That is all I was, I believe.

Q. Well, what do you mean by saying you came back in, if you were there only once?

A. Well, I remained in the room, I think, while the writing was done. I believe I was on the lower floor when I went back to the room.

Q. Well, you told various parties, didn't you, that this affidavit was all written up before you got there?

A. I don't remember anything like that, no, sir.

Q. Don't remember saying that? A. No, sir.

Q. Will you swear you didn't say so?

A. I don't know whether I can answer that or not.

Q. You told us that the indictment against you was dismissed. A. I believe so, yes.

Q. When did you learn about that?

(Testimony of Albert Jemison.)

A. I just couldn't say; I believe I overheard somebody, that told me that they had seen it in a paper; or I seen it in a paper myself.

Q. Anybody talk to you about the matter—before it was dismissed, that the indictment was dismissed?

A. No, sir, not as I remember.

Q. There was some talk about it before, was there not? A. Before I was indicted?

Q. Yes.

A. Well, I don't know as I had any private conversation myself, but I believe I understood it; I cannot answer that question.

Q. Cannot answer that question? A. No, sir.

Q. What do you understand by that?

A. Well, I cannot answer that.

Q. Cannot answer that even? A. No, sir.

Q. Well, as a matter of fact, Mr. Jemison, you had an agreement, did you not, with Mr. Zevely, that if you would make this affidavit concerning which you have testified, and go before the grand jury, either that no indictment would be found against you, or if it was found, it would be dismissed?

A. Well, I just can't answer that. Well, I believe I heard him say something about it to some of the other parties that was in the room, but I cannot say that I had that agreement with him my particular self.

Q. Well, what did you say about it?

A. Well, I cannot remember, word for word, what I did say.

(Testimony of Albert Jemison.)

Q. You don't seem to have a very good memory, to-day? No reason that you know of that affects your memory to-day? A. I don't know as I do.

By Mr. MAYNARD.—I hardly think that is a fair question, and I object to that and move that the question be not answered, and that the Examiner admonish the witness that this is a personal question that he is at liberty to not answer, if he so desires. (Answer not insisted upon by the defendant.)

Redirect Examination.

(By Mr. MAYNARD.)

Q. Now, Albert, when you were assisting Mr. Griswold, in making the locations under this stone and timber act, as you have now testified, for Mr. Cobban, how much under the agreement that you made with Mr. Griswold was he to receive from the money that Mr. Cobban was to pay you for each location that you made from the very beginning?

A. I don't believe that I understand that. How much he was to receive from Mr. Cobban?

Q. No, how much were you to pay Mr. Griswold as his commission for the locations that you made for Mr. Cobban in what we term the Griswold contract?

A. How much was I to pay him?

Q. If you don't understand that— Was it true that you were to receive a certain amount of money for each location?

(Testimony of Albert Jemison.)

By Mr. BICKFORD.—We object to the question, for the reason that it is leading.

A. Yes, sir.

Q. That you made under what is known here—what we have denominated the Griswold contract?

A. From Griswold, yes, sir.

Q. Well, now, as a matter of fact, from the very beginning you were just simply assisting him, and you were working, as you understood, all the time for Mr. Cobban, just the same as you were working for him?

By Mr. BICKFORD.—That is objected to as being leading.

A. I had a few transactions after I first worked for him.

Q. And at the time you received that information, all the way through you so understood?

By Mr. BICKFORD.—That is objected to for the reason that it is leading, and on the further ground that it is incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. And when you turned in those locations to Mr. Griswold from the beginning, or very shortly afterward, you say that he paid you?

By Mr. BICKFORD.—That is objected to for the reason that it is leading, and on the further ground that it is incompetent, irrelevant and immaterial.

A. Mr. Griswold?

Q. How much did he pay you, Albert?

A. He gave me an order on R. M. Cobban.

(Testimony of Albert Jemison.)

Q. Yes, he gave you an order on R. M. Cobban?

By Mr. BICKFORD.—That is objected to for the reason that it is leading, and on the further ground that it is incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. That is the way he paid you, is it?

A. Yes, sir.

Q. Well, now, please tell us what, in your best memory, how much those orders amounted to that were given to you by Mr. Griswold on Mr. Cobban, and that Mr. Cobban paid?

By Mr. WALSH.—We object to that for the reason that it is not the best evidence of the fact sought to be adduced, and the orders themselves would be the best evidence.

By Mr. MAYNARD.—Undoubtedly, but we made a demand upon the defendant for each account given them.

A. Well, I cannot just tell as to that.

Q. Well, I know that, but about how many hundred dollars?

A. I think there was two different orders that were something over a hundred dollars each. The others I have no recollection just when or how much it was. There were other times, I remember. Those, I think, amounted to something over a hundred dollars each.

Q. And you took those orders from Mr. Griswold to Mr. Cobban?

(Testimony of Albert Jemison.)

By Mr. BICKFORD.—We object to the question for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial.

Q. How were those several hundred dollars that you have testified to, how were they paid by Mr. Cobban, by check or by currency?

By Mr. WALSH.—We object to that for the reason it is incompetent, and on the further ground that the check itself would be the best evidence of that fact.

A. Who paid then, do you mean?

Q. Yes, sir.

A. They were paid by check on the First National Bank of Missoula.

Q. And these, as I understand it, instead of your turning in the locations to Mr. Griswold, and your receiving pay on the order from Mr. Griswold to Mr. Cobban, you dealt directly with Mr. Cobban, and you get the orders from Mr. Griswold?

By Mr. WALSH.—We object to that for the reason it is incompetent, and on the further ground that the check itself would be the best evidence of that fact.

A. Yes, after a time, but I cannot say just when.

Q. Now, then, Albert, you say that this affidavit that you made upon last April, at Missoula, was made out in shorthand and then reduced by the stenographer to stenographic printed notes, and so on, in printed form.

A. I said I didn't know for certain.

Q. But that was your judgment about it?

(Testimony of Albert Jemison.)

A. That was my best recollection. I couldn't say any positive answer to it.

Q. That purported to be a duplicate original, and that affidavit has been examined by you?

A. Yes, sir.

Q. Yes, and a good many times, has it not?

By Mr. BICKFORD.—We object to that as being leading, and incompetent, irrelevant and immaterial to any of the issues in this case.

A. Yes, sir, I believe so, yes.

Q. And you attention has been specifically called to this point? A. Yes, sir.

Q. And a request made by myself, as the representative of the Government, to have you point out wherein and in what respect you desired to make any corrections in that original Zevely affidavit, is that not so?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, sir.

Q. And you have done so, haven't you?

By Mr. BICKFORD.—Objected to as being leading, and on the further ground it is irrelevant and immaterial to any of the issues in this case.

A. I believe you marked several places in there, yes.

Q. Well, now, I hold in my hands (examine that please). (Paper is handed witness by counsel.) That is the original duplicate affidavit to which I have now called your attention, and which has, as you say, been

(Testimony of Albert Jemison.)

presented to you several times under the circumstances which you have just referred to.

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and upon the further ground that it is leading.

By Mr. WALSH.—We desire to inspect the paper referred to by counsel and handed to the witness.

By Mr. MAYNARD.—I propose to read into the record, your Honor, each and every question and answer that was put to and is down in the original affidavit, and with an opportunity to my brothers to cross-examine the witness, and to have him point out wherein and in what respect he desires to change the question—the answers to the questions that he then made.

(At this point a recess was taken until two o'clock P. M. of the same day.)

Helena, Montana, Monday, Dec. 16th, 1901, 2 P. M.

Hearing resumed, and redirect examination of the witness, Albert Jemison, by Mr. Maynard, continued.

Q. Now, Mr. Jemison, just before the recess I called your attention to the affidavit that you made before Mr. Zevely, which you examined and which has been read over by you several times since last spring, and I now desire to read this to you and get it in the record, and wherever there is any mistake I want you to correct it.

Mr. WALSH.—We object to the reading of this so-called affidavit upon the ground that the same is wholly unjustified by anything the witness has said or omitted

(Testimony of Albert Jemison.)

to say, and that the testimony is immaterial and irrelevant, and because there is no question raised in any manner as to what the witness did or did not say in the so-called affidavit, and because the same is immaterial and irrelevant; because the question now put to the witness is leading, and because it is an evident attempt on the part of the Government to cross-examine its own witness and to impeach him.

Mr. MAYNARD.—I will withdraw the question for the present, reserving the right, when we have this, together with the original affidavit signed by Mr. Jemison, which was forwarded to Washington, here, so that we can have them both together.

ALBERT JEMISON.

Subscribed and sworn to before me this 19 day of December, 1901.

HENRY N. BLAKE,
Examiner in Chancery.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES OF AMERICA,
Complainant,
vs.
WILLIAM A. CLARK,
Defendant.
No. 157.

To the Judges of the above-entitled court:

I do hereby certify that, under the order of the said Court made and entered in the said cause upon the first

day of October, 1901, in pursuance of the stipulations and agreements of the above-named parties, I continued to take the testimony therein at the United States courtroom in the city of Butte and also at my office in the city of Helena in said district. That George H. Macdougall and Charles H. Cooper, heretofore appointed stenographers, took the testimony of the witnesses in shorthand and transcribed the same; that the following-named persons were called as witnesses and appeared personally before me and were duly sworn to testify to the truth, the whole truth and nothing but the truth, to wit:

Franklin B. Arcy, Lelia T. Bryan, Thomas B. Bryan, Phil Greenan, George D. Greene, Elmer E. Hershey, Elijah W. Hoyt, Albert Jemison, Charles H. Jemison, Jacob F. Jemison, James Mize, Charles H. Moss, Albert F. Muchmore, Guy W. Muchmore, Oliver E. Muchmore, John Murtaugh, William Q. Ranft, Charles P. Sperry, Lewis A. Wells, and H. T. Wilkinson.

That said witnesses were examined and cross-examined by counsel for the parties, and their testimony is contained in this volume No. II, pages 580 to 1132, inclusive; and that the witnesses, who respectively read and corrected their testimony, subscribed and verified the same before me at the times hereinafter mentioned. Exhibits of the complainant, numbered consecutively from 77 to 198, inclusive, are herewith filed.

Dated this 28th day of February, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

H. T. WILKINSON, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Wilkinson, what is your name, please?

A. H. T. Wilkinson.

Q. Where is your home?

A. At Missoula, Montana.

Q. What official position do you now hold?

A: County clerk and recorder of Missoula County:

Q. How long have you held that office?

A. Pretty nearly three years.

(Witness produces a number of papers.)

Mr. BICKFORD.—If your Honor please, at this time we want to say that these papers appear to be under the hand and seal of the clerk and recorder of Missoula County, these papers which are presented here, and while we object to them upon the grounds that they do not prove or tend to prove any issue in the case, we presume the law to be that the papers are proof in themselves, and we object to them only on the grounds that they do not prove or tend to prove any issue in the case.

The EXAMINER.—You wish no objection to the papers on the ground that they are wrongly certified to, etc.?

Mr. BICKFORD.—No, sir; they are properly certified to and seem to be regular in that.

The EXAMINER.—It is not necessary for me to do it now, but during the recess I will take these papers and

(Testimony of H. T. Wilkinson.)

mark every one of them as an exhibit, and designate them by the figures, 1, 2, 3, and whatever they may be.

Q. Let us know in the first place, Mr. Wilkinson, what papers you have before you there?

A. They are copies of deeds from certain persons to R. M. Cobban, and patents from the United States to those same persons.

Q. Do the deeds precede the patents in date; if they do, just kindly read the names and dates in each case.

Mr. BICKFORD.—We object to that question.

Mr. MAYNARD.—The only point is to see which one we will have him read first.

Mr. BICKFORD.—Our objection is that it is irrelevant and immaterial as to the order in which the papers are dated, whether the deed precedes the patent or is made subsequent to the patent.

Mr. MAYNARD.—Oh, no; I just simply asked in order to keep it in chronological order, that is all.

Mr. WALSH.—He can answer the whole thing collectively in each case.

Q. Read the names of the persons and the dates from the patent; that is all I will ask for.

A. And the deed at the same time?

Q. Yes, both.

A. Patent to George B. Jameson on the 28th of June, 1900; deed from George B. Jameson to R. M. Cobban, dated the 29th of September, 1899.

(Testimony of H. T. Wilkinson.)

Patent to Recy. M. Jameson, the 28th of June, 1900; deed from—no deed of that.

Patent to Albert Jameson, 28th June, 1900. That deed may be a joint deed in the other, but it is hard to check them up unless you check the whole thing.

Q. Can you get through quicker?

The EXAMINER.—I will state this much, that when I go through them and number them, I will see that, say, No. 1 would be the deed, No. 2 would be the patent, and so on right through, so that they will be consecutively numbered.

Q. Proceed just as you were, coupling the two together.

A. Patent to Albert Jameson, 28th June, 1900; deed from Albert Jameson to R. M. Cobban, 22d September, 1899.

Patent to Jacob F. Jameson, 28th June, 1900; deed from Jacob F. Jameson to Cobban, 2d September, 1899.

Patent to Abraham J. Jameson, 28th June, 1900; deed to Cobban, 6th November, 1899.

Patent to Charles H. Jameson, 28th June, 1900; deed to Cobban, 6th November, 1899.

Patent to Zora Jameson, 28th June, 1900; I don't see any deed here.

Patent to Joshua C. Gilman, 28th June, 1900; deed from Gilman to Cobban, 29th September, 1899.

Patent to Lavinia I. Gilman, 28th June, 1900; deed to Cobban, 29th September, 1899.

(Testimony of H. T. Wilkinson.)

Patent to George Dildine, 12th October, 1900; deed from Dildine to Cobban, 7th October, 1899.

Patent to William J. Eddy, 28th June, 1900; deed from Eddy to Cobban, October 30th, 1899.

Patent to Mary Eddy, 28th June, 1900; patent to Herbert Eddy on the same day; deed from Herbert Eddy and Mary Eddy to Cobban, 27th October, 1899.

Patent to Calvin Yarger, 28th June, 1900; deed to Cobban, 7th October, 1899.

Patent to Thomas Roll, 28th June, 1900; patent to Laura Roll on the same day; deed from Thomas and Laura Roll to Cobban, October 27th, 1899.

Patent to James W. Wheaton, 28th June, 1900; deed to Cobban, 27th October, 1899.

Patent to Daisy L. Chattin, 28th June, 1900; deed to Cobban, 20th October, 1899.

Patent to John L. Deering, June 28th, 1900; deed to Cobban, October 20th, 1899.

Patent to John Sallen, June 28th, 1900; deed to Cobban, October 25th, 1899.

Patent to Charles C. Snider, October 12th, 1900; deed to Cobban, October 20th, 1899.

Patent to Matthew P. Dunham, June 28th, 1900; deed to Cobban, October 27th, 1899.

Patent to Frank B. Arey, June 28th, 1900; deed October 27th, 1899.

Patent to Dan McGillis, June 28th, 1900; deed November 7th, 1899.

Patent to Elvira M. Hardy, June 28th, 1900; patent to John H. Hardy on the same day; deed from John H.

(Testimony of H. T. Wilkinson.)

Hardy and Elvira M. Hardy to Cobban, November 11th, 1899.

Patent to Arnold Mickels, June 28th, 1900; deed September 9th, 1899.

Patent to James Mise, June 28th, 1900, and to Jenny Mise on the same day; deed from James and Jenny Mise to Cobban, November 6th, 1899.

Patent to John G. Hendricks, June 28th, 1900; deed November 10th, 1899.

Patent to John Murtough, June 28th, 1900; deed December 5th, 1899.

Patent to Albert Ehle, October 12th, 1900; deed November 25th, 1899.

Patent to Oscar Muckenhirn, December 30th, 1899; deed August 12th, 1899.

Patent to Stephen Tepper, December 30th, 1899; deed September 2d, 1899.

Patent to Robert Starkey, October 12th, 1900, and to Mary A. Starkey, June 28th, 1900; deed from Robert Starkey and Mary Starkey to Cobban, November 25th, 1899.

Patent to John B. Reeve, October 12th, 1900, and to Eliza A. Reeve, June 28th, 1900; deed from John B. and Eliza A. Reeve, October 25th, 1899.

Patent to Eveline Jameson, June 28th, 1900; deed to Cobban, October 7th, 1899.

Q. Now, Mr. Wilkinson, what papers do you now hold in your hand?

A. Some deeds from Robert M. Cobban and Alice M. Cobban to William A. Clark.

(Testimony of H. T. Wilkinson.)

Q. How many are there? A. Three deeds.

Mr. BICKFORD.—If your Honor please, we object to the introduction of the testimony, and the introduction of the deeds from R. M. Cobban and wife to William A. Clark, for the reason that there is no issue raised by the pleading concerning these deeds, it being asserted and admitted by the pleadings that these deeds were executed.

Mr. MAYNARD.—I offer in evidence, if your Honor please, the three deeds which witness holds in his hands, from Mr. Cobban and wife to the defendant.

Mr. WALSH.—To these we object for the reasons just stated.

The EXAMINER.—Yes, I will identify these, and it will take some time, and they will be all ready tomorrow morning and I will have the stenographer identify them by the numbers.

Mr. MAYNARD.—For the purpose of identification, I will just read this first deed:

"This indenture made the 16th day of September, 1899, between R. M. Cobban and Alice M. Cobban, husband and wife, of Missoula, Missoula County, Montana, parties of the first part, and William A. Clark, of Butte, Silver Bow County, Montana, party of the second part."

Then follows the descriptions of the lands therein contained. The second deed is from the same party, made on the 9th day of January, 1900. In the first deed, the named consideration is fifteen thousand and thirty-one dollars and twenty-five cents, and in the second, eighteen

(Testimony of H. T. Wilkinson.)

thousand eight hundred and fifty dollars. The third deed is a conveyance between the same parties, dated the 11th day of November, 1899, and the named consideration is thirty-five thousand five hundred and twelve dollars and fifty cents.

The first deed is acknowledged on the same date, namely, the 16th day of September, 1899, before Fred C. Stoddard, a notary public for Missoula County. The second is acknowledged on the same day, namely, the 9th day of January, 1900, before Wallace P. Smith, a notary in and for Missoula County. The acknowledgment of the third is on the day and year first named, namely, the 11th day of November, 1899, before Fred C. Stoddard, notary public.

Q. You have no other papers in your office, have you, Mr. Wilkinson, in connection with this matter?

A. Why, not that were asked for, no, sir; I don't think we have anything affecting it, anyway.

Q. You don't know of any that relate to it any way?

A. No, sir.

Q. Would there be, in due course of business, any papers filed in your office?

A. Not unless it were transferred from the grantee to some other person.

Q. That is, subsequent conveyances would be recorded?

A. Yes, sir.

Cross-examination waived.

The EXAMINER.—With the consent of parties, Mr. Wilkinson is excused from further attendance. And I notify Albert Jameson, Thomas B. Bryan and John Mur-

(Testimony of H. T. Wilkinson.)

tough that they will be excused from attendance until the 2d day of December at 10 A. M., at which time they will be required to be present in court.

Further hearing adjourned till Nov. 23d, 10 A. M.

GEORGE D. GREENE, called by the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your full name, Mr. Greene?

A. George D. Greene.

Q. Where do you live?

A. At Helena, Montana.

Q. What official position do you now hold?

A. Register of the United States land office for the Helena, Montana, District.

Q. How long have you held that position?

A. I took charge of the office on the 20th day of May, 1898, and have had charge of it ever since.

Q. I desire to call your attention to the case which is now under consideration, involving the proceedings that were had in your office by a large number of men and women under the Stone and Timber Act, which resulted in their obtaining patents to lands for which they made application. Your attention has been called by me to the lands to which I refer, Mr. Greene? A. Yes, sir.

Q. The question is, have you now in your possession the original papers on file in your office?

A. I have all of those to which you called my attention.

(Testimony of George D. Greene.)

Q. I wish that you would produce the first of the original statements.

(Witness produces papers referred to by counsel.)

A. They are all grouped together—that is, the original statements are with the final proofs as they were considered by the general land office, and the whole record in each case is complete altogether. I think we may have the duplicates of the sworn statements, which were retained on file in the Helena land office, and also the original sworn statements that were sent to the commissioner of the general land office.

Q. Please take up the first one in that pile, Mr. Green.

By Mr. BICKFORD.—We will now enter a formal objection to the production, presentation and consideration of the record of the Helena land office, for the reason that those papers only tend to prove admitted facts in the case, and do not prove or tend to prove any issue raised by the pleadings in this case, and they are therefore irrelevant and immaterial.

Q. Now, I wish that you would take them one by one and name and identify them, Mr. Greene.

A. The papers in Timber and Stone Cash Entry No. 6121, by John Gilles. Do you wish the different papers identified, that is, each separate paper that is in the record in each of the cases?

Q. I desire to facilitate the matter as much as I can. If we can cover the ground by stipulation of counsel, we might do so. Give us the entire proceedings in the land

(Testimony of George D. Greene.)

office relative to each individual entryman and entrywoman.

By Mr. WALSH.—If there is any stipulation that you want on our part, we shall be very glad to give it. We are perfectly content that you should get it into the record, but of course we shall object to it going in evidence upon the ground that it is immaterial. We are perfectly willing, however, to admit that all the papers produced here by Mr. Greene are what they purport to be, if that will help the situation out.

By Mr. MAYNARD.—I suggest that we take the same course that we took with the clerk and recorder of Deer Lodge County, and substitute certified copies as we may hereafter require.

A. Proof of Cash Entry No. 6121, made by John Gilles, August first, 1899, for the south half of the northwest quarter, and the north half of the southwest quarter of section twelve, township fourteen north, of range thirteen west. I would like to ask if you want the names of the witnesses who made final proof, because if this is going to be brought out, it would be more convenient for me to give the names of the witnesses used in the final hearing than it would be to go through them later.

By Mr. WALSH.—We wish you would do that, Mr. Greene, because we want that too.

A. Charles Clontier and Chauncey L. Griswold were witnesses at the final proof of this entry.

Q. Now, I wish you would be kind enough—I want

(Testimony of George D. Greene.)

the number of each one. When was that original statement filed? A. You want the original statement?

Q. Yes, sir.

A. Yes, sir, that was filed May 22d, A. D. 1899.

Q. And how much was paid by the entryman?

A. It was one hundred and sixty acres, four hundred dollars was paid, and one dollar for the filing fee—four hundred dollars for the purchase price.

Q. Is that what the record shows?

A. Yes, sir, the receiver's receipt shows that four hundred dollars. In addition there was a dollar or something like that paid for testimony.

Q. A dollar for testimony?

A. Yes, but that isn't in the receipt; that is a matter of the working force in the office.

Q. That was at the time the final receipt was delivered?

A. Yes, sir, that was August 1st, 1899, when that was paid.

Q. August 1st, 1899? A. Yes, sir.

Q. Can you state to whom this receipt was delivered?

A. No, I cannot, Mr. Maynard.

Q. Can you in any of these cases, Mr. Greene?

A. In none of these cases. The receiver issued and either mailed or delivered the receipt; it was a matter of which I knew nothing whatever. I took the proof and then was immediately engaged in other work. We were very busy, and I didn't stop for anything of that kind.

Q. So that you have no record as to whom this final receipt was delivered?

A. I didn't take the testimony; there is nothing of that

(Testimony of George D. Greene.)

kind required to be kept, and unless Mr. Horsky has a record of his own—which I don't think he has—there is no record of it.

Q. Have you any date by which you can tell by whom this money was paid? A. No, sir.

Q. In none of these cases?

A. No, sir. The money was paid to Mr. Horsky, and I paid no attention to it. I will say, however, that in one or two cases, or perhaps three or four, the money was paid to me and turned over by me to Mr. Horsky; but my recollection is that when the money was paid it was paid to me by the party making the entry. Of course, I have no distinct memory about that; I was working pretty hard at that time, and it was a matter which pertained to the receiver's work, and I just simply handed it to him.

Q. Have you any data in that case by which you can determine whether or not the patent subsequently issued on the application?

A. I have the patent record here, if I can refer to it. Do you desire me to do so?

Q. Yes.

A. The patent was on Cash Entry 6120, to Charles Cloutier. The patent was issued February 2d, 1900, and recorded in volume 32, page 215, records of the general land office, and was mailed to R. M. Cobban, Missoula, Montana, March 12th, 1900.

By Mr. BICKFORD.—At this point, if your Honor please, we desire to interpose a motion to strike out the answer of the witness to the last question, for the reason

(Testimony of George D. Greene.)

that the testimony goes to an admitted fact, and it is therefore irrelevant and immaterial to any of the issues raised by the pleadings in this case. I don't understand that there is any dispute about that, Mr. Maynard.

By Mr. MAYNARD.—Well, I hope there won't be any; I am trying to prevent a possible dispute about the facts.

Q. Are your papers substantially the same in each of those cases, Mr. Greene?

A. Yes, they are the same practically.

Q. Well, now, will you be kind enough to give us the names—the technical name of each one of the papers which make up the record in this case of John Gilles?

A. Charles Cloutier?

Q. No, John Gilles, he is the man.

A. Oh, I looked for Cloutier. I don't see where that has been indexed in the patent indexes; I don't think patent has been issued in this case of John Gilles. I can see it by running through the patent indexes.

By Mr. BICKFORD.—The patent about which you testified a moment ago. Cloutier, he was one of the witnesses instead.

Q. Now, in the case of this John Gilles—you think that—you haven't any reference in your index to the issuance of patent, you say?

A. I can find nothing which shows where patent has been issued.

Q. Now, Mr. Greene, will you be kind enough to give us the technical name of each one of the papers which

(Testimony of George D. Greene.)

make up the record in your land office of the application of John Gilles?

A. The first is the sworn statement; the next is the notice of publication, then the proof of publication, then the final proof of the claimant, and two witnesses. The next is the final certificate and then the final receipt. I think that is all the papers. In this case, however, the payment was made in scrip. So there is a lot of scrip here that was received in payment for the land. It is really no part of the record in the case.

Q. What connection in the discharge of your duty as register of the land office, did you have with this proceeding?

A. I took the proofs and issued final certificate, and figured up the acreage and the amount due, and handed it to the receiver to settle with the parties.

Q. Do I undersand you, then, that you would have entire charge of the matter until the time came when the money was paid?

A. Yes, I took charge of the matter in all final proofs of every kind in the office, although the receiver is supposed to help to attend to that part of the work.

Q. But as a matter of fact he did not?

A. He did not, except one or two days when I was too ill to be at the office.

Q. You will please state the character of that sickness.

A. Well, I was troubled with the incipient stages of Bright's disease, and I was very miserable during that

(Testimony of George D. Greene.)

entire summer, and the latter part of 1898, and all of 1899, and a great portion of 1900.

Q. Well, state more specifically what you mean by the words, "very miserable."

A. Well, my digestion was poor and I was weak and the work was very onerous, and I was in a condition of "wornoutness," if I may call it that, all the time. I don't know how else to state it.

Q. You may state as to whether or not there was a large amount of business during all this time in your office.

A. Yes, the business had increased threefold and we had no additional help. To illustrate, the year before we took charge of the office there was about 1780 entries of all kinds made, and the year that these entries were made there were over five thousand entries of all kind made, with the same clerical force and the correspondence and contest work had increased in like proportion.

Q. Was your Bright's disease so marked that you regulated your diet accordingly?

A. Yes, sir, I lived on bread and milk for considerably over a year. Anything else distressed me, so that it wasn't pleasant to eat anything else.

Q. Had these lands been newly opened up under which these proceedings were had?

A. Yes, sir, the plats had been filed but a short time before the entries were made.

Q. Where were those plats?

A. The plats, they were on file in the land office.

(Testimony of George D. Greene.)

Q. To speak generally, how much of a body of land did they embrace?

A. Six miles square, a township of six miles square, and some fractional townships.

Q. When were they opened up?

A. Why, I think most of those entries were made in 1899 or 1900. They were open up just about the time the entries commenced. We received plats at several different times.

Q. Did you have any acquaintance with John Gilles?

A. No personal acquaintance, except as I was introduced to him by some of the parties that came in with him.

Q. Can you give the names of any of the parties that came in with him?

A. I don't think I can at this time, unless Mr. Griswold came with him, and I don't think Mr. Griswold did when he came and made the sworn statement, but when he made the final proof.

Q. So, as I understand you, you didn't know John Gilles and you have no present recollection of the person that introduced you to him?

A. No, they generally came in three or four together and one would introduce the other.

Q. Would you know the introducer?

A. Not generally; in some cases I did. I think Mr. Cobban introduced me to one or two, perhaps, but I couldn't tell who they were.

Q. When did you make the acquaintance of Mr. Cobban?

(Testimony of George D. Greene.)

A. I knew Mr. Cobban first in 1882, in Wickes, but just slightly, just met him once or twice out at a sawmill there.

Q. In 1882, did you say?

A. I think perhaps that was the year, perhaps it was 1881.

Q. What has been the character of your acquaintance since that time?

A. I hadn't met him at all until he came into the land office there that time—from that time on.

Q. When was that?

A. That was sometime in 1899.

Q. For what purpose did he come into the land office?

A. To look up land about this forest reserve lieu selections.

Q. You think that he introduced you to two or three persons who made application under the Stone and Timber Act?

A. I think perhaps he did, one or two, I don't know who they were. I know he was there on one or two cases when the timber and stone applications were made.

Q. Did you have any acquaintance with any other persons that had anything to do in any way with this application of Mr. Gilles?

A. I don't know, as I said before, I cannot separate one application from the other.

Q. You said that Mr. C. D. Griswold was one of the witnesses. A. C. L. Griswold.

(Testimony of George D. Greene.)

Q. C. L. Griswold was one of the witnesses at the time of the making of some of the proofs.

A. Yes, at some of the times.

Q. At this one time, calling your attention to that particularly? A. Yes, sir.

Q. You recognize Mr. Griswold sitting at my side here, don't you? A. Yes, sir.

Q. How long had you known Mr. Griswold?

A. Well, I had known him quite a while. He had come into the office about the time these first applications were made under the Stone and Timber Act. I don't know whether he came in before or not. Anyway, I felt quite well acquainted with Mr. Griswold at about that time.

Q. You may state as to whether or not during that spring and summer of 1899, he was frequently in your office? A. Yes, sir, he was.

Q. What was he doing there?

A. He came there as a witness in this case, and I don't know but what he looked up the records some; I am not positive as to that. I know he was there very frequently during that period of time.

Q. Do you know Mr. John B. Catlin?

A. Yes, sir.

Q. How long have you known him?

A. I have known him by reputation a long time; when I first met him, I can't recall, but I knew him at the land office at Helena, that was the first time I ever became acquainted with him to talk much to him.

(Testimony of George D. Greene.)

Q. You may state as to whether or not he was in the office during the time? A. Yes, sir, he was.

Q. Frequently?

A. Well, he was there several times pretty close together. My impression is that he didn't come nearly so often as Mr. Griswold did, but he was there quite a number of times, during the time the first entries were made, or rather, the first applications.

Q. Now, what was Mr.—you say that Mr. Catlin was there at the beginning when these applications were made?

A. Yes, sir, in the beginning of the applications.

Q. Did he come with the entrymen and entry women?

A. He came himself and someone else with him. My impression is that there were only two at that time; I don't know, however. I know that there was more than Mr. Catlin and he made an application himself, and some others with him. How many, I cannot tell now. I could tell by the dates of the papers.

Q. Well, now, in the case of John Gilles, just state the course of procedure. A. Well,—

Q. What was first done in your office?

A. He first came and made what is called the sworn statement; came alone without any witnesses, at that time; that is, for that purpose. There were others with him, though, and the sworn statements were made, sworn to, either before myself or Mr. Horsky; in this case, I think I swore them.

Q. Will you get me the original statement, the original sworn statement?

(Testimony of George D. Greene.)

A. I have it here, Mr. Maynard, that was sworn to before me on the 20th day of May, 1899.

(Witness hands counsel paper referred to by him.)

Q. Now, I am anxious to cover as much ground as I can in a short time, and if we can fix the proceedings in one case, perhaps you could say substantially the same course was taken with each one.

A. Yes, sir.

Q. Now, the course of procedure, as I understand you, a man comes into your office and desires to make an entry. He is introduced to you and the first step is swearing to that statement.

By Mr. BICKFORD.—Wait a moment. We object to that as being leading.

A. Yes, sir.

Q. And you identify that as the original sworn statement of John Gilles?

By Mr. BICKFORD.—We object to that as being leading.

A. Yes, sir.

By Mr. MAYNARD.—They have the divine privilege of objecting, but that is as far as it goes; you can answer just the same. I want them to avail themselves of it to the fullest extent in this case.

Q. You may state as to the signature, Mr. Greene.

A. To this sworn statement?

Q. Yes, sir. A. John Gilles.

(Testimony of George D. Greene.)

Q. Yes, and I mean the name of Greene that appears there. A. Yes, sir.

Q. Who wrote that?

A. Yes, sir, the jurat is signed by me.

Q. Did you sign it yourself?

A. Yes, sir, I signed it myself.

Q. Mr. Greene, you may state in regard to that indentical original statement you have there. What condition was that in when it first came to your notice?

A. In the same condition it now is, with the exception of Gilles' signature and mine; that is, it was all filled out.

Q. Explain what you mean by that?

A. The sworn statement was all prepared, ready for the signature of the applicant and they came in to have me swear them to it.

Q. Who delivered it to you?

A. Gilles himself.

Q. And when he delivered it to you, as I understand you, it was in the same condition that it is now, with the single exception that his name was not then on it, or your name.

By Mr. BICKFORD.—That is objected to as leading.

A. I think that is true; there were times when they were not signed, and in those cases I always asked them if that was their signature. They were very few, however; in most cases they signed in my presence, and I don't think that there was more than two or three times that they were all signed when they brought them to

(Testimony of George D. Greene.)

me; in fact, I don't believe there was any time when these entries were being made that they were signed when they brought them in. But sometimes that is true in the land offices.

Q. When they were not signed they were filled out when they came into the office to swear to them, were they?

A. Yes, sir. If they were not we require them to get someone to fill them out for them, and they are brought back prepared then, and from this writing (witness refers to paper) I am satisfied that it is not in the handwriting of anyone in the office.

Q. Is it not a fact that you have a rule of the office governing the filling out of papers, and if so, what is the rule?

A. The rule is that parties applying to make entries must have their papers made out. We are not allowed to make out papers except where a man is poor, and we know it, and in that case our instructions are to fill out the paper for them, and we always do it.

Q. So under the rule all your papers are filled out before they come into your hands?

A. Yes, sir, as a general rule, except in the cases I have mentioned.

Q. And you wouldn't know but what they filled them out themselves?

A. No, not unless the parties who prepared the papers are with them, or there is something about the papers to notify me who filled out the papers. I think

(Testimony of George D. Greene.)

I can tell who filled out most of the papers in these matters, when I come to them.

Q. How long a time would it take to do it—the business that was required at the time of the making out of this first paper?

By Mr. BICKFORD.—We object to that because it is irrelevant and immaterial.

A. About two minutes, just long enough to read over the affidavit and swear them to it, and in some cases I don't think it took that time. I asked them if they were familiar with the contents of that affidavit when I was in ery much of a rush, and if they said they were, I swore them to it, without reading it over to them.

Q. So that if a man came in there with that paper made out and he was a perfect stranger to you, he need not in the due order of business be in your presence more than two minutes before he could leave the office and do all that you required, and, as you understand it, it was usually done in that time.

By Mr. BICKFORD.—Objected to as leading.

A. Yes, sir.

Q. When would be the next—what would be the next step taken?

A. The next step would be to issue notices setting the time for making the final proof, and send it to the newspaper of general circulation nearest the land, for publication; sixty days publication being required under this act.

(Testimony of George D. Greene.)

Q. Who did that work?

A. I did it; the clerks usually filled out the notice if they were not already filled out. In some cases the notices were already filled out, and all I needed to do was to sign my name to them.

Q. What do you mean by the notice being filled out?

A. Well, I will show you. There is the blank form of notice. (Witness hands counsel paper referred to.)

By Mr. MAYNARD.—The paper which is now produced by the witness and handed to counsel for the Government, is the Timber Land Act of June 3d, 1878, the notice for publication in the United States land office at Helena, Montana, May 29th, 1899, reads as follows:

"Notice is hereby given that under and in compliance with the provisions of the act of Congress of June 3, 1878, entitled 'An act for the sale of timber lands in the States of California, Oregon and Nevada, and Washington Territory, as extended to all the public land states by act of August 4th, 1892.'

"John Gilles, of Clearwater, county of Deer Lodge, State of Montana, has this day filed in this office his sworn statement, number 67, for the entry of the south half of the northwest quarter and the north half of the southwest quarter of section 12, township 14 north, of range 13 west, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the register and receiver at the land office, in Helena, Montana, on Thursday, the 21st day of August, 1899. He

(Testimony of George D. Greene.)

names as his witnesses, Charles Cloutier, of ———, C. L. Griswold, of ———, Stephen Pipper, of ———, and A. J. Griswold, of Clearwater, Montana. And any and all persons claiming adversely to the above-described land are required to file their claims in this office on or before said 21st day of August, A. D. 1899.

GEORGE D. GREEN,
Register.

"This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period."

By Mr. MAYNARD.—Then follows certificate as to posting of notice.

"United States Land Office.

I, Garnet Mining News ———————— Register of the Land Office."

By the WITNESS.—That is a certificate that we never filled out. The certificate of posting is separate from that. That "Garnet Mining News" is just an indication of the paper it was sent to for publication.

By Mr. MAYNARD. (Continues).—"Do hereby certify that the above notice was published in a conspicuous place in my office during the period of sixty days. And further, I, ————————, posted the same on the —— day of ———, 189—.

(Testimony of George D. Greene.)

"I further certify that there are no adverse claims to the above-described land now on file in my office.

_____

Register."

Q. Now, let me understand you, Mr. Greene, you say that that is the second paper in the due course of procedure?

A. Yes, sir, that follows immediately after the filing of the sworn statement.

Q. And that is made out after the applicant has left the office?

A. Yes, sir, the applicant has nothing to do with that paper.

Q. Well, now, that paper seems to be in several handwritings, or at least two. Who filled out that paper?

A. Miss Payette, the notice clerk in the office, filled it out, and I see that I changed the date. She had it filled out for the 20th of July, and I have changed it to August 1st, for some reason that I don't know now.

Q. You say the last part of that paper isn't filled out in your office?

A. No, sir, that isn't a part of the record at all.

Q. Well, why was it printed there?

A. Well, I don't know.

Q. It is the appendix at your office, I presume?

A. Yes, sir, the certificate of posting is made out separately. I have that here. There is the regular certificate of posting as used by us.

(Testimony of George D. Greene.)

Q. Just wait a moment. Now, would you know anything of his witness, the applicant's witness, save as he informed you?

A. We always inquired of the witness at the time the sworn statement was made, and always used those that the claimant requested; and, in fact, that is true of all final proofs of claims, the claimant himself names the witnesses.

Q. Were you in the habit of asking him where his witnesses lived? A. I don't think we were.

Q. Were you required by the rules to do so?,

A. I don't know of any rule that makes that requirement. The postoffice address of witnesses is required, and I think they are always put down. I think you will find the postoffice address of those witnesses; that is, it should have been there.

Q. The names there on the paper, Charles Cloutier, of ——— for instance, was that supposed to represent his postoffice address?

A. Yes, sir, Clearwater, Clearwater, Montana.

Q. On this paper the blanks are not filled out on the first—for the first three witnesses?

A. Well, they are supposed to all have the same address.

Q. Well, why do you say that?

A. Well, I don't know, but the word "all" is usually put in before the preposition "of"; I presume the clerk omitted that.

Q. Well, you don't presume it; it is a fact that it is omitted? A. Yes, sir, it is.

(Testimony of George D. Greene.)

Q. And as a matter of fact, on this paper the postoffice address of only one of the persons, one of the witnesses, appears? A. That is the way it appears there.

By Mr. WALSH.—We object to this testimony, upon the ground that the regularity of the proceedings in the land office upon which the patent is sought to be set aside, is based, is in no manner attacked in the bill of complaint, and that therefore this testimony is irrelevant and immaterial.

Q. As I understand you, you had no knowledge, nor anyone in your office had any knowledge, so far as you know, of any of these witnesses?

By Mr. BICKFORD.—That is objected to as leading.

A. Only such as the claimant gave when he made his sworn statement. We don't know everybody in this district, and it is impossible for us to know; we have to rely upon the statement of the applicant.

Q. Who determined the newspaper in which this publication was to be made? A. I did.

Q. Always?

A. Always the register designates the newspaper.

Q. From the knowledge in your office you found that this was the paper to publish this notice in?

A. Yes, sir, the geographical location of the paper settled that; it was beyond my power to change it.

Q. Now, what is the third paper?

A. The third paper is the final proof in response to this notice.

Q. Where is that?

(Testimony of George D. Greene.)

A. The final proof is here, and the claimant and two witnesses. I have the testimony here of the claimant, John Gilles, and his witness; there is the testimony of the claimant (witness indicating on the paper).

Q. The testimony of the claimant is there as a part of the testimony in the case.

A. Yes, well, the testimony of the claimant and the witnesses, that is all supposed to be one step. Four witnesses are named by the claimant, but he selects two of them besides himself to give proof.

Q. Two of the four witnesses named by the claimant?

A. Yes, sir.

By Mr. MAYNARD.—Now, I will read into the record just one of these cases, Brother Walsh.

(The paper that the witness now produces, with the printed instructions thereon, reads as follows:)

"The testimony of the claimant and the witnesses must be taken at the same time, and before the register or receiver of the land district in which the land is situated.

Timber and Stone Lands."

By Mr. BICKFORD.—May I ask the witness a question or two?

By Mr. MAYNARD.—Yes, sir, certainly.

(By Mr. BICKFORD.)

Q. Is this paper furnished you by the department at Washington, D. C.? A. Yes, sir.

Q. Are all the papers concerning which you have testified furnished you in blank by the department?

(Testimony of George D. Greene.)

A. Yes, sir.

By Mr. BICKFORD.—All right, that is all.

By Mr. MAYNARD (Continues).—"John Gilles being sworn as a witness in support of his application to purchase the south half of the northwest quarter, and the north half of the southwest quarter of section 12, township 14 north, of range 13 west, M. M., testifies as follows:

Question 1. What is your age, postoffice address, and where do you reside?

Answer. Age, thirty-six years, postoffice address, Clearwater, Montana, also residence.

Question 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Answer. I am a naturalized citizen of the United States.

Question 3. Are you the identical person who applied to purchase this land on the 20th day of May, A. D. 1899, and made the sworn statement required by law before the register on that date? Answer. I am.

Question 4. Are you acquainted with the land above-described by personal inspection of each of its smaller legal subdivisions? A. I am.

Question 5. When and in what manner was such inspection made?

A. About the 15th day of May, 1899, I made the inspection by walking all over the ground and examining it carefully.

(Testimony of George D. Greene.)

Question 6. Is the land occupied or are there any improvements upon it not made for ditch or canal purposes, or which were not made by or do not belong to you?

Answer. Yes, unoccupied; there are no improvements on it.

Question 7. Is the land fit for cultivation or would it be fit for cultivation if the timber were removed?

Answer. No.

Question 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

Answer. Yes, on the north. Slope of the hill is rough and rocky. What soil there is there is very thin and cannot be irrigated.

Question 9. Are there any salines or indications of deposits of gold, silver, cinnabar, copper or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable? Answer. None.

Question 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Answer. Chiefly valuable for timber.

Question 11. From what fact do you conclude that the land is chiefly valuable for timber or stone?

Answer. Because of the timber on it and the fact that it has no value for any other purpose.

Question 12. What is the estimated value of the timber and stone on this land?

Answer. There are about seven hundred thousand or

(Testimony of George D. Greene.)

eight hundred thousand feet of timber, valued at seven or eight hundred dollars.

Question 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?

Answer. I have not.

Question 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use, and not for the use or benefit of any other person?

Answer. I do.

Question 15. Has any other person than yourself or has any firm, corporation or association any interest in the entry you are now making, or in the land or in the timber thereon? Answer. No, sir.

(Signed) JOHN GILLES"

The certificate of the register is as follows:

"I hereby certify that John Gillis personally appeared before me; that I verily believe affiant to be the person he represents himself to be. That each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Helena, Montana, this 1st day of August, A. D. 1899.

GEORGE D. GREENE,
Register."

(Testimony of George D. Greene.)

The certificate attached thereto reads as follows:

"Every person swearing falsely to the above deposition is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto the money that may be paid for the land is forfeited and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

"I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses directed to ascertain whether the entry was made in good faith for the appropriation of the land, and the entryman's own use, and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever, by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person or persons except himself, and am satisfied from such examination that the entry is made in good faith for the entryman's own exclusive use, and not for sale or speculation, nor in the interest, nor for the benefit of any other person or persons, firm or corporation.

GEORGE D. GREENE,
Register (or Receiver).

[Endorsed]: Timber Lands. Acts of June 3, 1878, and August 4, 1892. Testimony of Claimant, John Gilles. Land Office at Helena, Mont. Section 12, Township 14, North Range 13 West, M. M."

(Testimony of George D. Greene.)

(At this point in the proceedings a recess was taken until two o'clock P. M. of the same day.)

Thursday, Dec. 12th, 1901, 2 P. M.

Hearing resumed, and the direct examination of the witness, Greene, resumed by Mr. Maynard.

Q. Now, Mr. Greene, what is your next paper?

A. The next paper in the regular order is the register's final certificate.

Q. Just let me see that, please.

A. Yes, sir. That is it.

Q. Let me have that other paper that you had before.

A. That is the claimant's testimony?

Q. Now, then, there is the testimony of the witnesses first.

A. Yes, sir, that goes in with that; that is all one proceeding, practically—the proof.

Q. The testimony of the claimant would be connected with the testimony of the witnesses?

A. Of the two witnesses, yes, sir.

Q. Just let me see the testimony of the witnesses.

A. Here it is.

Mr. MAYNARD.—The paper which I now read, which was handed to me by the witness, is known as Blank No. 4371, in which the words are printed, "Testimony of two witnesses in this form, taken separately, required in each case. Testimony of the witnesses under the act of June 3d, 1878. C. L. Griswold, being called as a witness in support of the application of John Gilles to purchase the south half of the northwest quarter and the

(Testimony of George D. Greene.)

north half of the southwest quarter of section 12, township fourteen north, range thirteen west, testifies as follows:

Question one. What is your age, postoffice address and where do you reside?

Answer. Age 46 years; postoffice address, Clearwater, Montana; residence, same place.

Question two. What is your occupation?

Answer. Lumberman.

Question three. Are you acquainted with the land above-described by personal inspection of each of its smallest legal subdivisions? Answer. I am.

Question four. When, and in what manner was the last inspection made?

Answer. On the 15th day of May, 1899. I had been familiar with the tract and over it a number of times before.

Question five. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which are not made by or belong to the same claimant?

Answer. It is unoccupied; no improvements whatever on the tract.

Question six. Is it fit for cultivation?

Answer. It is not.

Question seven. What causes render it unfit for cultivation?

Answer. It lays on a high slope of the mountain, could not be irrigated, and is rough, broken and rocky ground.

(Testimony of George D. Greene.)

Question eight. Are there any salines or indications of deposits of gold, silver, copper, cinnabar or other minerals on this land; if so, state what they are, and whether there are mineral springs that are valuable?

Answer. There are none that I know of.

Question nine. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Answer. Chiefly valuable for timber; no value for anything else.

Question ten. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Answer. From the fact that the land is covered with timber, is worthless for agricultural purposes and does not contain mineral of any value.

Question eleven. Do you know whether the claimant has, directly or indirectly, made any agreement or contract in any way or manner with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Answer. Not to my knowledge; I am sure he has not.

Question twelve. Are you in any way interested in this application or in the lands above-described or in the timber or stone, salines, or improvements in the description above-named? Answer. I am not.

(Signed) C. L. GRISWOLD.

I hereby certify that the witness is a person of respectability; that each question and answer in the fore-

(Testimony of George D. Greene.)

going testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me, this 1st day of August, 1899.

GEORGE D. GREENE,
Register."

Testimony similar to the above and on a similar blank was given by the witness, Charles Cloutier.

Q. Now, then, the next step would be what?

A. The register's final certificate.

Mr. BICKFORD.—Wouldn't it be a good idea to have the additional memorandum on the bottom of the third page put in?

Mr. MAYNARD.—Yes, sir. At the bottom of this Griswold blank, there also appears the following printed words:

"Note: The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and to state to him that it is the purpose of the Government, if it should be ascertained that he testifies falsely to prosecute him to the fullest extent of the law: Title LXX, Crimes, ch. 4, section 5392. Every person, who, having taken an oath before a competent tribunal, officer or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, who willfully and contrary to such oath states

(Testimony of George D. Greene.)

and subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be punished by a fine of not more than two thousand dollars and by imprisonment at hard labor for not more than five years, and shall, moreover, thereafter be incapable of giving any testimony in any court of the United States until such time as the judgment against him is reversed. See section 1750."

Q. What paper is this, Mr. Greene?

A. That is the register's final certificate of entry.

Mr. MAYNARD.—Which reads as follows:

"Land office at Helena, Montana,

August 1, 1899.

No. 6121.

It is hereby certified that in pursuance of law, John Gilles, residing at Clearwater, in Deer Lodge County, State of Montana, on this day purchased of the register of this office the south half of the northwest quarter and the north half of the southwest quarter of section No. 12, in township No. 14 north, of range No. 13 west, of Mont., principal meridian, Montana, containing one hundred and sixty acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars and — cents, for which the said John Gilles has made payment in full as required by law. Now, therefore, be it known that, on the presentation of this certificate to the commissioner of the general land office, the said

(Testimony of George D. Greene.)

John Gilles shall be entitled to receive a patent for the last above described.

(Signed) GEORGE D. GREENE,
Register."

The WITNESS.—You will notice that there was a mistake in the name; the clerk that prepared the certificate spelled the name "Gillis" and it was returned to be corrected to "Gilles."

Q. What are those indorsements on that certificate there?

A. Those are indorsements of the general land office, all except this one, "Helena Land Office at Helena, Montana"; that is our indorsement, and all the rest are general land office indorsements with which I am unfamiliar.

Q. The general land office in Washington?

A. In Washington, yes, sir.

Q. What is that in red ink; do you know that?

A. Assignments of both warrants good. June 19/00. J. F. W."

Q. That was done at Washington?

A. Yes, sir.

Q. And you are not familiar with that?

A. I suppose it relates to the assignments of these warrants to the claimant in the case; that is what I would suppose it to mean.

Q. And what is the technical name of this paper?

A. The register's final certificate of entry.

Q. Now, what is the next step?

(Testimony of George D. Greene.)

A. The next is the receiver's final certificate.

Q. That is the register's certificate?

A. This is the register's final certificate of entry, and that is the receiver's final receipt for the money received.

Q. And this is required in each of the cases?

A. Yes, sir.

Mr. MAYNARD. (Reading).—"No. 6121. Receiver's office at Helena, Montana, August 1st, 1899. Received from John Gilles of Deer Lodge County, Montana, the sum of four hundred dollars and no cents, being in full for the south half of the northwest quarter and the north half of the southwest quarter of section No. 12 in township No. 14 north of range No. 13 west, Montana meridian, containing one hundred and sixty acres and no hundredths, at two dollars and fifty cents per acre. John Horsky, Receiver. $400. $1, testimony fee. Number of written words 445. Rate per hundred words 22½ cents. $10, sworn statement."

Mr. BICKFORD.—Did you also give the endorsement, "Payment made by surrender of military warrants"?

Mr. MAYNARD.—No, I didn't, because that refers to this particular case, and I wanted something that was general.

Mr. BICKFORD.—Well, we can take that up on cross-examination.

Q. Now, what is the next paper?

A. That completes the record. The record is then

(Testimony of George D. Greene.)

placed with the files, to be transmitted with the general returns at the end of the month.

Q. To Washington? A. Yes, sir.

Q. That paper, you mean, is to be placed—

A. All of the papers are placed as they are now, together on file, to be transmitted with the general returns at the end of the month.

Q. For examination by the land department?

A. Yes, sir, and for the issuance of patent.

Q. It is for examination and review by the land department? A. Yes, sir.

Q. And if they find anything irregular in the papers, they transmit it to your office, do they not?

Mr. BICKFORD.—Objected to as leading.

A. If they find any defect or omission, they retain the papers and write to have that defect corrected or omission supplied, and if there is a defect in a single paper, that paper is returned for correction and the rest kept on file at the general land office. If the evidence is defective on any fact, they simply write a letter calling attention to the defect and allowing the claimant, say, sixty days to supply the deficiency.

Q. In other words, all the papers that are forwarded by your department are reviewed by the officers of the land department? A. Yes, sir.

Q. And if they see anything that needs addition, they notify your office, and, if possible, the addition is made?

(Testimony of George D. Greene.)

Mr. BICKFORD.—That is objected to because it is leading.

A. Yes, sir.

Q. Now, the man who receives the final certificate, deeds, you don't know anything about that in your official capacity?

A. No, sir; by the way, we don't issue the final certificate; we don't deliver it to him. He gets only the final receipt from the receiver.

Q. After he has received the final receipt, that ends your connection with the matter?

A. That ends my connection with the matter entirely, unless, as I stated, there is some omission or defect which is required to be completed.

Q. Now, you may state as to whether or not the general form of the papers which I have read in the Gilles case, applies to each one of the cases to which I shall call your attention.

A. Yes, sir, with the possible exception of the manner of payment. There was quite a number paid by scrip, and quite a number by cash, but that would be the only difference.

Q. I mean, the same Government blanks were used in each case? A. Yes, sir.

Q. And substantially the same form and course of procedure was used in all the cases that was used in the Gilles case? A. Yes, sir.

Q. Now, then, is there any way of determining how long a time will elapse to the issuing of the patent by

(Testimony of George D. Greene.)

the Government of the United States after the papers have been forwarded to the land department?

A. There is no regular time. It all depends on the condition of the general land office as to the amount of work ahead of these papers when they are received by them. The time varies from four months to a year or over; if the papers are all correct, a patent usually comes within six months, but if omissions have to be supplied or defects to be cured, it usually takes longer. I say six months—that would be the approximate time; there is no arbitrary time.

Q. If, as a matter of fact, the patent does issue from the land office, to whom is it sent?

A. It is sent to the register of the land office at Helena.

Q. And what does the register do?

A. I issue notice to the claimants that the patent is there—or rather, I have one of the clerks do it; that is a matter that I never attend to myself, and really I don't know when a patent is there unless some one asks me to look it up. One of the clerks has charge of that department and looks after all things pertaining to it.

Q. Do you in all cases send the patent to the entryman?

A. No, we send the patent to whoever surrenders the final receipt; that is our authority to deliver the patent, and in looking over the record I find that the patents are almost over half of them sent to someone other than the entryman.

Q. And you have that record with you?

(Testimony of George D. Greene.)

A. Yes, sir; that is the record that I referred to this morning.

Q. Have you made an examination of the record with reference to the question as to whom these were delivered to? A. I have not.

Q. You haven't had time?

A. No, sir. I brought the record, and I can refer to it in a very short time and tell you to whom the patents were delivered; there were two or three I know went to Mr. Cobban.

Q. But you can tell definitely from an examination of your record?

A. Yes, sir, I can tell definitely who received each patent that has been delivered.

Q. Now, returning again to the Giles case, when these two witnesses came with the claimant, or with the applicant, who fills out those blanks?

A. Well, I usually did, and sometimes one of the clerks helped me, and when we were crowded considerably Mrs. Greene came and helped me; she helped in the office a long time during the time I was so worn out and the work was so heavy.

Q. That is Mrs. Greene, your wife?

A. My wife, yes, sir.

Q. But you say that either Mrs. Greene or some member of your official staff filled out these blanks in each case? A. Yes, sir.

Q. Just tell the mode of procedure, please. The day has now come when the sixty days has elapsed and they desire to make their final proofs; the man comes into your

(Testimony of George D. Greene.)

office with two witnesses out of the four. Now state what you did?

A. Well, just simply took the blanks and took the witnesses and the claimant and sat down and asked them questions and took down the answers.

Q. Was your office in Helena at this time where it is now?

A. No, it was in the Pittsburgh building on Main street. The office was much smaller there than our present office.

Q. Was the space in front of the office proper substantially as it is now?

A. No, it was more like this room would be if that railing extended—if that wall was closed up to that railing. The register and receiver had their place over there, and the chief clerk was right against the railing and inside, the records were on this side, and the other clerks inside here, except Miss Blaine, who had a desk in front, by the receiver's; it was just about as wide as this room inside the railing. The testimony was all taken right up there in front, by myself, and Mr. Horsky was close by, and the chief clerk ten or eleven feet away, and when Mrs. Greene was there, she was just across a table of about this size from me.

Q. But there was a railing, was there not, in front of the office? A. Yes, sir.

Q. Where were the witnesses?

A. The witnesses were in front.

Q. Outside of the railing?

(Testimony of George D. Greene.)

A. Sometimes outside of the railing, but when they gave their testimony they were generally inside of the office where we were. Understand me, that railing divided the place where the records were kept from where the register and receiver and Miss Blaine worked, and then there was a counter along similar to the one we have in our office now, but all of the witnesses and the applicant were inside.

Q. Let me understand you fairly and fully, just what your course of procedure was.

A. Well, I could not outline it any further than that, Mr. Maynard. We just took the blanks and the witness for claimant would sit right close, and we would go through and ask them each question in the blanks. Sometimes there would be quite a discussion in reply as to part of the answer, and sometimes the answer would be taken right down at once. There was not much cross-examination; we didn't have time for that, not nearly as much as I would give under the present circumstances. In fact, we got through with everything, not only this work but all work in the office at that time just as quick as we possibly could, in order to keep it from getting piled up and confused.

Q. You say you were overworked and had not sufficient help?

A. Yes, sir. We had to do everything that was done there just the quickest possible way in order to get it through with at all, and for the reason the cross-examinations outside of the questions in the blanks were not as rigid as I believe they should have been. However,

(Testimony of George D. Greene.)

at that time that did not occur to me; I was simply thinking of getting through with the work somehow.

Q. Now, refreshing your recollection, or bringing your mind to the transaction when the final proofs were made in the Gilles case, have you any present recollection as to any fact that occurred there at that time that you have not testified to?

A. I don't remember that case, or hardly any of them, as distinct from the others, so I don't remember any particular fact, except simply that testimony was taken in connection with it.

Q. And you say that no patent was issued for what reason?

A. I don't know why patent was not issued in this case; it seems, however, that the final certificate was returned to be corrected to issue in the name of 'Gilles' instead of 'Gillis'; as it was issued; that would cause a delay, but why it was not issued I don't know, unless these proceedings or some proceedings had been commenced before they reached it again in its regular order; of course, I have no means of knowing about that.

Q. What is your next case there?

A. Has Mr. Bickford got any papers over there?

Mr. BICKFORD.—I have two.

Mr. MAYNARD.—I desire to call Mr. Ranft for a few minutes; he lives at Missoula, and both the register and receiver are here, and it is necessary for one of them to be in the office.

Mr. BICKFORD.—Very well.

(Testimony of George D. Greene.)

The EXAMINER.—By consent of counsel, Mr. Greene was excused, and complainant then called William Q. Ranft.

GEORGE D. GREENE,

Subscribed and sworn to before me this 14 day of December, 1901.

HENRY N. BLAKE,
Examiner in Chancery.

Monday, December 2d, 1901, 10 o'clock A. M.

Hearing resumed pursuant to adjournment. Whereupon, by agreement of counsel, the hearing was continued until December 9th, 1901, at ten o'clock A. M.

Monday, December 9th, 1901, 10 o'clock A. M.

Hearing was resumed pursuant to adjournment. Whereupon, by agreement of counsel, the hearing was adjourned until Wednesday, December 11th, 1901, at ten o'clock, A. M., and all the witnesses heretofore subpoenaed were required to appear at that time.

Wednesday, December 11th, 1901, 10 o'clock A. M.

Hearing was resumed pursuant to adjournment. Whereupon, upon the application of defendant, and by consent of counsel, the hearing was adjourned until Thursday, December 12th, 1901, at ten o'clock A. M., and all witnesses heretofore subpoenaed were required to appear at that time.

Thursday, December 12th, 1901, 10 o'clock A. M.

Hearing was resumed pursuant to adjournment.

PHIL GREENAN, a witness called by the complainant, after being first duly sworn by the Examiner, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your full name?

A. Phil Greenan.

Q. Phil? A. Yes, sir.

Q. Where do you live, Mr. Greenan?

A. Anaconda.

Q. In this State? A. Yes, sir.

Q. What official position, if any, do you now hold?

A. County clerk and recorder of Deer Lodge County, Montana.

Q. How long have you held that position?

A. Since the 7th day of January, 1901.

Q. Have you now before the Examiner certain original books that are kept by you in your office?

A. Yes, sir.

Q. Will you produce them? A. Yes, sir.

By Mr. BICKFORD.—At this time, if your Honor please, I desire to interpose the same objection which was interposed at the time when the county clerk and recorder of Missoula was on the stand, and that is, we object to the introduction of the record of Deer Lodge County, Montana, in evidence, for the reason that the records of that county will not prove or tend to prove any issue in the case. For the further reason that the testimony which is now offered and sought to be intro-

(Testimony of Phil Greenan.)

duced is concerning admitted facts as shown by the pleadings in this case, and do not prove or tend to prove any fact which is in issue; that the record is introduced and made a part of the record in this cause would be entirely superfluous, in that no issue is made by the pleadings as to the transfers of the land in controversy.

Q. I wish you would take up these books in their order, Mr. Greenan, and point out the volume and the page upon which are recorded certain conveyances from Mr. Cobban—R. M. Cobban—conveyances made by him to the defendant in this case, W. A. Clark.

A. There is one transfer from R. M. Cobban and Alice M. Cobban, his wife, to William A. Clark, in book 20, page 546.

By Mr. BICKFORD.—I desire, if your Honor please, to say that the objection which I made in the commencement of this cause—the taking of the testimony in this cause—was intended to cover all of the records that are now sought to be introduced. I desire to have it so understood.

By the EXAMINER.—Yes.

Q. I don't know, if your Honor please, we have these original books here, I suppose the register and recorder would like to take them back with him, and perhaps he should read them into the record.

By Mr. WALSH.—The defendant consents that in place of the original records, the Government may, before the conclusion of the taking of the testimony, substitute certified copies of the original records offered,

(Testimony of Phil Greenan.)

and that such certified copies shall be considered as evidence in this case, with the same force and effect as the original record; subject, however, to such objections as may be or may have been made by the defendant to the introduction of the original records themselves.

By Mr. BICKFORD.—You can go on and introduce the books now, Mr. Maynard, if you wish to, subject to our objection.

Q. Now, if you will please be kind enough, Mr. Greenan, to identify that book and the name of the grantor and the name of the grantee and so on.

A. This is book No. 20, and the conveyance is on page 546. It is R. M. Cobban and Alice M. Cobban, his wife, to William A. Clark.

Q. What date was that, Mr. Greenan?

A. That was the 29th day of July, one thousand eight hundred and ninety-nine.

Q. Name the consideration, too, please.

A. The consideration was seven thousand six hundred and fifty-six dollars and twenty-five cents.

Q. And the date of the filing?

A. Filed for record on the eighth day of August, A. D. 1899, at one o'clock P. M. by M. Martin, county recorder.

Q. And the lands are in what county?

A. Deer Lodge county.

Q. Montana?

A. Yes, sir. That was a mistake on my part, that isn't Deer Lodge County. It is R. M. Cobban and Alice

(Testimony of Phil Greenan.)

M. Cobban, of Missoula County, parties of the first part, and William A. Clark, of Silver Bow County, Montana, party of the second part; the land is situated in Deer Lodge County, yes, sir.

Q. I wish you would take the same course with each of your books.

A. The next is book 34, at page 326. R. M. Cobban and Alice M. Cobban, husband and wife.

(By Mr. BICKFORD.)

Q. Give me the book and the page again, Mr. Greenan, please.

A. Book 34, page 326, R. M. Cobban and Alice M. Cobban, of Missoula County, to William A. Clark, of Butte, Silver Bow County, Montana. The consideration was twenty-one thousand one hundred and seventy-five dollars.

(By Mr. MAYNARD.)

Q. When was the date of that and the date of the filing?

A. The date of the instrument is the 16th day of September, A. D. 1899, and the date of the filing, September 25th, A. D. 1899, at 9:20 A. M., M. Martin, county recorder.

Q. Go on, Mr. Greenan.

A. The next one is book 34, page 366; the date of the instrument is the 13th day of November, A. D. 1899, R. M. Cobban and Alice M. Cobban, husband and wife, of Missoula, Missoula County, Montana, to W. A. Clark, of Butte, Silver Bow County, Montana; the considera-

(Testimony of Phil Greenan.)

tion is thirty-three thousand seven hundred and eighteen dollars and seventy-five cents. Filed for record November 23d, 1899, at 11:50 o'clock A. M., M. Martin, county recorder.

Q. And the next one is what?

A. The next one is book 34, page 429. The date of the instrument is the 9th day of January, 1900, R. M. Cobban and Alice M. Cobban, his wife, of Missoula, Missoula County, Montana, to William A. Clark, of Butte, Silver Bow County, Montana. The consideration is nine thousand four hundred and eighty-one dollars and twenty-five cents, and it was filed for record on the 15th day of February, A. D. 1900, at 9:10 o'clock A. M., M. Martin, county recorder. The next instrument is in book 46, at page 1; made on the 15th day of June, in the year one thousand nine hundred. Robert M. Cobban and Alice M. Cobban, his wife, of Missoula, Missoula County, Montana, to William A. Clark, of Butte, Silver Bow County, Montana. The consideration is sixty-two thousand five hundred and two dollars and fifty cents, and it was filed for record June 25th, 1900, at ten o'clock A. M., M. Martin, county recorder.

Q. What is the next, Mr. Greenan?

A. The next is book 36, page 4. The date of the instrument is the 15th day of June, 1900; the grantors are Robert M. Cobban and Alice M. Cobban, husband and wife, and Samuel Dinsmore, an unmarried man, of Missoula, Missoula County, Montana, parties of the first part, and William A. Clark, of Butte, Silver Bow County, Montana, party of the second part. The con-

(Testimony of Phil Greenan.)

sideration is three thousand three hundred and twenty-five dollars; the instrument was filed for record on June 25th, 1900, at 9:11 o'clock A. M., M. Martin, county recorder.

Q. When was that, the date of the instrument?

A. The date of the instrument, the 25th day of June, 1900.

Q. Did you give that?

A. Yes. That is all of the transfers from R. M. Cobban and his wife to W. A. Clark.

Q. Have you the dates of the recording of this same land to Mr. Cobban?

A. Well, yes, I guess I have.

Q. And have you also got the dates of the recording of the patents? A. Yes.

Q. Have you got the pages so that you can find them? I want to have the stenographer take it all down. Give us the patents, Mr. Greenan, which you have, give us all of them; are they all in one book?

By Mr. WALSH.—We want to object particularly to the record found at page 1, book 36, for the reason that the same affects lands other than any of the lands mentioned in the bill of complaint in this cause.

By Mr. MAYNARD.—Inasmuch as the register and recorder is to return certified copies of these deeds, I will ask that he be permitted to be called later and furnish certified copies of the papers in his office—of all the papers that we need—in his office. He hasn't them here and it will simply save time to take that course.

(Testimony of Phil Greenan.)

By the EXAMINER.—Do you wish to cross-examine the witness?

By Mr. WALSH.—No, no cross-examination of the witness at this time.

(At this point the witness was excused from the stand temporarily, to be recalled later.)

WILLIAM Q. RANFT, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Ranft, what is your full name?

A. William Q. Ranft.

Q. Where do you reside?

A. I live at Missoula, Montana.

Q. What official position do you now occupy, if any?

A. Receiver of the United States land office at that place.

Q. How long have you held that position?

A. I was appointed in July, 1897, and qualified, I think, in August, 1897, and have been acting ever since and am the present receiver of that office at Missoula.

Q. Do you know Mr. Hershy?

A. Yes, sir, very well acquainted with him.

Q. Who is he?

A. He is the register of that office.

Q. And you are the receiver?

A. I am the receiver, yes, sir.

(Testimony of William Q. Ranft.)

Q. Do you know Mr. R. M. Cobban?

A. I am very well acquainted with Mr. Cobban.

Q. And Mr. Catlin?

A. John B. Catlin? I have been acquainted with Major Catlin for something over ten years.

Q. What relationship, if any, does he sustain to Mr. Cobban?

Mr. BICKFORD.—That is objected to as being immaterial.

A. Do you mean of a business nature?

Q. Yes.

A. I don't know that I can state definitely; it would be a matter of hearsay entirely with me, but my notion was—

Mr. WALSH.—We object to the witness giving anything that he knows about the matter from hearsay, or his notion or impression of the matter.

A. I am not in a situation to state definitely what the business relation between Mr. Cobban and Mr. Catlin is or was.

Q. What relationship does Mr. Catlin sustain to Mr. Hershy, if you know?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. He is the father in law of Mr. Hershy, Mr. Hershy having married his daughter.

Q. Do you know as to whether or not, during the spring, summer and fall of 1899, Mr. John B. Catlin, the

(Testimony of William Q. Ranft.)

father in law of Mr. Hershy, was associated in business with Mr. Cobban?

Mr. BICKFORD.—Objected to as leading.

A. I should say that he was, and would justify that conclusion from the fact that in a number of instances duplicate receiver's final receipts were sent to Major Catlin.

Q. Do you know of the fact, while you were receiver of the land office there, of entries and proceedings having been taken by various parties under the Stone and Timber Act?

A. I know that particularly during the summer of 1899 there were a number of timber and stone entries in the office.

Q. How many would you say to your best knowledge?

A. Well, that would be a conjecture almost entirely; I could state definitely by reference to the record.

Q. Have you the record here?

A. No, I didn't bring that record that gives the number of timber and stone entries. I could tell, however, I think within— I have here the names of forty-eight entrymen and entrywomen who entered land under the act of June 3d, 1878, which is regarded as the Timber and Stone Act; I fancy, however, that there were in the neighborhood in that year of something like one hundred entries. As I say, that is a conjecture; I could state definitely by an examination of the record.

Q. You have a list there in your possession of, you say, how many? A. Of forty-eight, here.

(Testimony of William Q. Ranft.)

Q. Forty-eight entrymen and entrywomen?

A. Yes, sir. They are the names of the persons, I think, whose names Mr. Zevely requested when he was in Missoula in the summer of 1900, I think it was, and I took those particularly because I took it, you know, that these would be the persons who would be involved.

Mr. ZEVELY.—What your subpoena called for?

A. Yes, sir.

(By Mr. MAYNARD.)

Q. Now, in addition to those forty-eight cases, have you got a record showing to whom you sent the final receipts? A. Yes, sir.

Q. Where is that record? A. Right here.

Q. Now, then, I will call your attention to sworn statement No. 269.

A. The numbers that I have here are the numbers of the receiver's final receipt; if you could give me the name of the person or the number of the receiver's final receipt, I could locate him.

Q. Receipt No. 1123, 1124, 1127, 1128 and so on.

A. Well, 1123, that is Jacob F. Jemison.

Q. Now, then, let me call your attention to receiver's receipt No. 1123. Do you know who purchased that land—let me ask you this question; do you know who purchased the northwest quarter of section 10, township 14—

A. Well, I don't have the receiver's final receipt, you know; this just shows me who the receiver's final receipt was sent to; it doesn't show the description of the

(Testimony of William Q. Ranft.)

land, but just the number of the receipt and the name of the claimant.

Q. Now, turning your attention to receipt No. 1123, are you able to say who purchased that description?

A. I am able to say that to Jacob F. Jemison was issued a duplicate receiver's final receipt No. 1123.

Q. For what description of land?

A. I am unable to furnish the description, for the reason that I have not the receiver's duplicate receipt; that is not retained in the office. The original receiver's receipt I think Mr. Hershey has. I could tell the descriptions very quickly if I had those. (Papers produced.)

The WITNESS.—Now, I can go on with 1123. Receiver's receipt No. 1123 was issued to Jacob F. Jemison for four hundred dollars, testimony fee one dollar and a half and register's and receiver's fee ten dollars, covering the northwest quarter of section ten, township fourteen north, range fifteen west, and containing one hundred and sixty acres, covered by timber and stone declaration No. 269.

Q. To whom was that receipt given or sent?

A. The receipt was sent to John B. Catlin at Missoula, Montana, on September 22d, 1899.

Q. Now proceed with the next one, please, and go right along.

A. The following receipt, No. 1124, dated at Missoula, Montana, September 22d, 1899, was issued to Albert Jemison of Deer Lodge County, Montana, for the

(Testimony of William Q. Ranft.)

sum of four hundred dollars, covering the purchase of the southwest quarter of section ten, township fourteen north, range fifteen west, containing one hundred and sixty acres, one dollar and a half—do you want these amounts and all that sort of thing?

Q. No, I don't care anything about that, unless my friends on the other side want it. It is the same amount in each case, isn't it?

A. Practically the same; where there is not so much land, of course, it is less; it is two dollars and a half an acre.

Mr. WALSH.—We don't care about those amounts.

The WITNESS.—Do you want to know to whom the receiver's receipt was issued in each case?

Q. Yes, please.

A. That was sent, receiver's duplicate receipt was sent to John B. Catlin at Missoula, Montana. Receiver's receipt No. 1188.

Q. That is not the next one I have.

A. Well, you see, I have made this data, and while you will find the name there, perhaps, it won't come in the order in which you have it.

Q. That will be all right.

A. Receiver's receipt No. 1188, dated at Missoula, Montana, November 25th, 1899, was issued to Albert Ehle of Missoula County, Montana, for the northwest quarter of section thirty-two, township fifteen north, range sixteen west, and the duplicate of that receiver's

(Testimony of William Q. Ranft.)

receipt was sent to John B. Catlin at Missoula, Montana.

Receiver's receipt No. 1189, dated at Missoula, Montana, November 25th, 1899, was issued to Eliza A. Reeve of Missoula County, Montana, covering the southwest quarter of section thirty-two, township fifteen north, range sixteen west, and the duplicate of that receiver's final receipt was sent to John B. Catlin at Missoula, Montana.

Receiver's receipt No. 1190, dated at Missoula, Montana—

Mr. BICKFORD.—I think in all these cases you had better have the date in there when it was sent out.

Mr. MAYNARD.—Yes, sir.

The WITNESS.—Well, in 1188 and 1189 the date was November 29th, 1899, and in 1123 and 1124 the date was September 22d, 1899.

Receier's final receipt No. 1190, dated at Missoula, Montana, November 25th, 1899, was issued to Mary A. Starkie of Missoula County, Montana, covering the south half of the northeast quarter and the north half of the southeast quarter of section thirty-two, township fifteen north, range sixteen west, and the duplicate of that receipt was sent to John B. Catlin on November 29th, 1899.

Receiver's receipt No. 1196, dated at Missoula, Montana, December 4th, 1899, was issued to John Murtaugh of Missoula County, Montana, covering the north half of the northwest quarter, the southeast quarter of the

(Testimony of William Q. Ranft.)

northwest quarter and the northeast quarter of the southwest quarter of section twenty-six, township fifteen north, range sixteen west, and the duplicate thereof was sent to John B. Catlin on December 7th, 1899.

Receiver's receipt No. 1204, dated at Missoula, Montana, December 15th, 1899, was issued to Effie M. Kilburn of Missoula County, Montana, covering the southwest quarter of section two, township thirteen north, range fifteen west, and the duplicate thereof was sent to the claimant, Effie M. Kilburn on December 15th, 1899.

Receiver's final receipt No. 1062, dated at Missoula, Montana, June 24th, 1899, was issued to Stephen Tepper of Deer Lodge County, Montana, covering the southeast quarter of section fourteen, township fifteen north, range fifteen west. The record of to whom that duplicate receipt was sent I do not have; there are just two that I do not happen to have, and that is one of them.

Receiver's receipt No. 1098, dated at Missoula, Montana, August 12th, 1899, issued to Oscar Muckenhirn of Deer Lodge County, Montana, covering the south half of the southwest quarter and the northeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section two, township fifteen north, range fifteen west; the record of to whom the receiver's duplicate receipt was sent has been lost.

Q. You say the record was lost?

A. Well, you know, in copying those—the way that it transpires is that I have adopted the method in the land office there of sending a letter with all receiver's

(Testimony of William Q. Ranft.)

final receipts and asking an acknowledgment on the bottom of that letter of the receipt of that receipt, and it sometimes happens in the rush of business that that letter is not copied. It seems that that transpires to be the case in these two particular instances.

Receiver's receipt No. 1110, dated at Missoula, Montana, September 2d, 1899, was issued to Stephen Tepper of Deer Lodge County, Montana, covering the west half of the northwest quarter of section twenty, township sixteen north, range fifteen west, and the receiver's duplicate receipt thereof was sent to R. M. Cobban at Missoula, Montana, September 5th, 1899.

(By Mr. WALSH.)

Q. That is not the timber and stone entry?

A. Yes, sir, that is the cash entry, timber and stone.

Q. That is two hundred dollars?

A. Yes, sir; it is only eighty acres, at two dollars and a half an acre. This receipt shows what it is; there is the timber and stone declaration on the top. You were misled by seeing "C. E.," cash entry. A commuted homestead would be a cash entry also.

Receiver's receipt No. 1111, dated at Missoula, Montana, was issued to Harriet Bryan of Missoula County, Montana, covering the south half of the southeast quarter and the south half of the southwest quarter of section twenty-six, township fifteen north, range fifteen west and receiver's duplicate receipt thereof was sent to R. M. Cobban at Missoula, Montana, September 7th, 1899.

(Testimony of William Q. Ranft.)

Receiver's receipt No. 1113, dated at Missoula, Montana, September 9th, 1899, was issued to Clara Belle Mickels of Deer Lodge County, Montana, covering the west half of the southeast quarter of section thirty-two, township fourteen north, range sixteen west, and the duplicate thereof was sent to John B. Catlin on September 11th, 1899.

Receiver's receipt No. 1114, dated at Missoula, Montana, September 9th, 1899, was issued to Arnold Mickels of Deer Lodge County, Montana, covering the northwest quarter of section eight, township fourteen north, range sixteen west, and the duplicate thereof was sent to John B. Catlin, September 11th, 1899.

Receiver's receipt No. 1125, dated at Missoula, Montana, September 29th, 1899, was issued to Recy M. Jemison of Ravalli County, Montana, covering the south half of the southwest quarter and the south half of the southeast quarter, being lots ten, eleven, and twelve of section six, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin, the letter of transmittal not being dated.

Receiver's receipt No. 1126, dated at Missoula, Montana, September 29th, 1899, issued to Lavinia I. Gilman of Victor, Ravalli County, Montana, covering the east half of the northeast quarter and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section eight, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana.

(Testimony of William Q. Ranft.)

Receiver's receipt No. 1127, dated at Missoula, Montana, September 29th, 1899, was issued to Joshua C. Gilman of Ravalli County, Montana, covering the west half of the southwest quarter, the northeast quarter of the southwest quarter and the southwest quarter of the northwest quarter of section four, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin, the letter of transmittal not dated.

Receiver's receipt No. 1128, dated at Missoula, Montana, September 29th, 1899, was issued to George B. Jemison of Ravalli County, Montana, covering the southeast quarter of section four, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana.

Receiver's receipt No. 1129, dated Missoula, Montana, September 29th, 1899, was issued to William J. Eddy of Ravalli County, Montana, covering the south half of the southeast quarter and the south half of the southwest quarter of section eight, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana.

Receiver's receipt No. 1136, dated at Missoula, Montana, October 7th, 1899, was issued to Eveline Jemison of Ravalli County, Montana, covering the west half of the northwest quarter and the west half of the southwest quarter of section thirty-four, township fifteen north, range sixteen west and the duplicate thereof was sent to the claimant, Eveline Jemison at Victor, Montana, October 9th, 1899.

(Testimony of William Q. Ranft.)

Receiver's receipt No. 1137, dated at Missoula, Montana, October 7th, 1899, was issued to Sarah Yarger of Ravalli County, Montana, covering the west half of the northwest quarter and the west half of the southwest quarter of section twelve, township fourteen north, range fifteen west and the duplicate thereof was sent to the claimant, Sarah Yarger, at Victor, Montana, October 9th, 1899.

Receiver's receipt No. 1138, dated at Missoula, Montana, October 7th, 1899, was issued to Emma Dildine of Ravalli County, Montana, for the east half of the southeast quarter, the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of section twelve, township fourteen north, range fifteen west and the duplicate thereof was sent to the claimant, Emma Dildine, at Missoula, Montana, October 9th, 1899.

Receiver's receipt No. 1139, dated at Missoula, Montana, October 7th, 1899, was issued to Laura Roll of Ravalli County, Montana, covering the west half of the southeast quarter and the south half of the southwest quarter of section twenty-six, township fifteen north, range sixteen west and the duplicate thereof was sent to the claimant, Laura Roll, at Victor, Montana, October 9th, 1899.

Receiver's receipt No. 1141, dated at Missoula, Montana October 20th, 1899, was issued to Charles C. Snyder, of Missoula County, Montana, covering lots one, two and three of section two, township fifteen north, range fif-

(Testimony of William Q. Ranft.)

teen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 21st, 1899.

Receiver's receipt No. 1142, dated at Missoula, Montana, October 20th, 1899, was issued to Daisy L. Chattin of Missoula County, covering the southeast quarter of section ten, township fifteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 21st, 1899.

Receiver's receipt No. 1143, dated at Missoula, Montana, October 20th, 1899, was issued to John L. Deering of Missoula County, Montana, covering the southwest quarter of section ten, township fifteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 21st, 1899.

Receiver's receipt No. 1147, dated Missoula, Montana, October 23d, 1899, was issued to George Dildine of Missoula County, Montana, covering the west half of the northwest quarter and the north half of the southwest quarter of section eight, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 24th, 1899.

Receiver's receipt No. 1148, dated at Missoula, Montana, October 24th, 1899, was issued to John Saleen of Missoula County, Montana, covering the west half of the northwest quarter and the northeast quarter of the southwest quarter of section ten, fifteen north, range fifteen west and the duplicate thereof was sent to the claimant, John Saleen at Missoula, Montana, October 25th, 1899.

(Testimony of William Q. Ranft.)

Receiver's receipt No. 1149, dated at Missoula, Montana, October 27th, 1899, was issued to Calvin Yarger of Ravalli County, Montana, covering the west half of the northeast quarter and the west half of the southeast quarter of section twenty-eight, township fifteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 28th, 1899.

Receiver's receipt No. 1150, dated at Missoula, Montana, October 27th—the receiver's receipt does not seem to be among those papers, but I have a record of it in this book; it was issued to Mary Eddy, covering the west half of the northwest quarter and the west half of the southwest quarter of section ten, township fourteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 28th, 1899. (Receipt No. 1150, Mary Eddy, afterwards discovered among some other papers.)

Receiver's receipt No. 1151, dated at Missoula, Montana, October 27th, 1899, was issued to Matilda Eddy of Ravalli County, Montana, covering the southeast quarter of the northeast quarter, the north half of the southeast quarter and the southeast quarter of the southeast quarter of section fourteen, township fourteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin of Missoula, Montana, October 28th, 1899.

Receiver's receipt No. 1152, dated at Missoula, Montana, October 27th, 1899, was issued to Thomas Roll of Ravalli County, Montana, covering the northeast quar-

(Testimony of William Q. Ranft.)

ter of section ten, township fourteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 28th, 1899.

Receiver's receipt No. 1154, dated at Missoula, Montana, October 27th, 1899, was issued to Herbert Eddy of Ravalli County, Montana, for the east half of the northeast quarter and the east half of the southeast quarter of section twenty-eight, township fifteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, October 28th, 1899.

Receiver's receipt No. 1155, dated Missoula, Montana, October 27th, 1899, was issued to James W. Wheaton of Ravalli County, Montana, covering the southwest quarter of section four, township fourteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 28th, 1899.

Receiver's receipt No. 1156, dated at Missoula, Montana, October 27th, 1899, was issued to Matthew P. Dunham of Deer Lodge County, Montana, covering lots one, two and three of section four, township fifteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, October 28th, 1899.

Receiver's receipt No. 1157, dated at Missoula, Montana, October 27th, 1899, was issued to Frank B. Arey of Missoula County, Montana, covering lot four and the north half of the southwest quarter of section four, township fifteen north, range fifteen west and the dup-

(Testimony of William Q. Ranft.)

licate thereof was sent to John B. Catlin at Missoula, Montana, October 28th, 1899.

Receiver's receipt No. 1166, dated Missoula, Montana, November 6th, 1899, was issued to Abraham J. Jemison of Ravalli County, Montana, covering the east half of the northwest quarter and the east half of the southwest quarter of section ten, township fourteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, November 7th, 1899.

Receiver's receipt No. 1167, dated at Missoula, Montana, November 6th, 1899, was issued to Jenny Mize of Ravalli County, Montana, covering the east half of the northeast quarter and the east half of the southeast quarter of section thirty-four, township fifteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin on November 7th, 1899.

Receiver's receipt No. 1168, dated at Missoula, Montana, November 6th, 1899, was issued to Zora Jemison of Ravalli County, Montana, covering the west half of the northeast quarter and the west half of the southeast quarter of section thirty-four, township fifteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin November 7th, 1899.

Receiver's receipt No. 1169, was issued to Charles H. Jemison of Deer Lodge County, Montana, covering the south half of the southwest quarter, the northwest quarter of the southwest quarter and the southeast quarter of the northwest quarter of section twenty-eight, township fifteen north, range sixteen west and

(Testimony of William Q. Ranft.)

the duplicate thereof was sent to John B. Catlin at Missoula, Montana, November 7th, 1899.

Receiver's receipt No. 1170, dated at Missoula, Montana, November 6th, 1899, was issued to James Mize of Ravalli County Montana, covering the east half of the northwest quarter and the east half of the southwest quarter of section thirty-four, township fifteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, November 7th, 1899.

Receiver's receipt No. 1173, dated at Missoula, Montana, November 7th, 1899, was issued to Dan McGillis of Deer Lodge County, Montana, covering lots two and three and the east half of the southwest quarter of section six, township fifteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, November 7th, 1899.

Receiver's receipt No. 1174, dated at Missoula, Montana, November 10th, 1899, was issued to Martha E. Wright of Ravalli County, Montana, covering the south half of the southwest quarter, the northeast quarter of the southwest quarter and lot four of section twelve, township fifteen north, range fifteen west and the duplicate thereof was sent to John B. Catlin, at Missoula, Montana, November 11th, 1899.

Receiver's receipt No. 1175, dated at Missoula, Montana, November 10th, 1899, was issued to Lizzie F. Catlin of Missoula County, Montana, covering the northwest quarter of section twelve, township fifteen north, range fifteen west, and the duplicate thereof was sent

(Testimony of William Q. Ranft.)

te John B. Catlin, at Missoula, Montana, November 11th, 1899.

Receiver's receipt No. 1176, dated at Missoula, Montana, November 10th, 1899, was issued to John G. Hendrix of Ravalli County, Montana, covering the west half of the northwest quarter and the west half of the southwest quarter of section thirty-two, township fourteen north, range fifteen west, and the duplicate thereof was sent to John B. Catlin, at Missoula, Montana, November 11th, 1899.

Receiver's receipt No. 1177, dated at Missoula, Montana, November 10th, 1899, was issued to Elvira M. Hardy of Essex County, Massachusetts, covering lots one, two, seven and eight, of section thirty-two, township fifteen north, range fifteen west, and the duplicate thereof was sent to John B. Catlin, at Missoula, Montana, November 11th, 1899.

Receiver's receipt No. 1178, dated at Missoula, Montana, November 10th, 1899, was issued to John H. Hardy of Essex County, Massachusetts, for lots three, four, five and six of section thirty-two, township fifteen north, range fifteen west, and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, November 11th, 1899.

Receiver's receipt No. 1186, dated at Missoula, Montana, November 25th, 1899, was issued to John B. Reeve of Missoula County, Montana, covering the south half of the northeast quarter and the west half of the southeast quarter of section four, township fourteen north,

(Testimony of William Q. Ranft.)

range sixteen west, and the duplicate thereof was sent to John B. Catlin at Missoula, Montana, November 29th, 1899.

Receiver's receipt No. 1187, dated at Missoula, Montana, November 25th, 1899, was issued to Robert Starkie of Missoula County, Montana, covering the west half of the southwest quarter, the northeast quarter of the southwest quarter and the southwest quarter of the northwest quarter of section twenty-two, township fifteen north, range sixteen west and the duplicate thereof was sent to John B. Catlin, November 29th, 1899.

Q. Can you tell how many of these receipts that you have now read there are?

A. There are forty-eight.

Q. Forty-eight final receipts?

A. Forty-eight receiver's final receipts.

Q. And of that number, how many were sent directly to Mr. John B. Catlin?

A. Well, I would have to go through the list, really, to determine that.

Q. And to Mr. Cobban?

Mr. BICKFORD.—We object, on the ground that it is irrelevant and immaterial.

Q. You have given it here, if you don't happen to know it, and it is simply a matter of computation?

A. Yes, I should say approximately—

Q. It is a mere matter of computation; I can determine that myself, because you have stated it, and it

(Testimony of William Q. Ranft.)

already appears in your testimony how many there were, and we can tell positively from an addition—

A. Yes; I was going to ascertain about that.

Mr. BICKFORD.—We move to strike out the statement of counsel, and also the testimony of the witness with reference to whom the final receipts were sent to, on the ground that the statements so made are irrelevant and immaterial and not responsive to any issue in the case.

Q. Now, do you happen to know how many applications there are on file in your office under the Stone and Timber Act?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. You mean at the present time, the number of applications now on file in the office?

Q. Yes, from the beginning.

A. Oh, from my incumbency in the office?

Q. Yes.

Mr. BICKFORD.—The same objection.

A. I could not state, with any degree of definiteness, but I should say in the neighborhood of two hundred and fifty to three hundred.

Q. Applications that have been made since you have been in office?

A. Since I have been in office, yes, sir.

Q. Now, is this all of the final receipts that were sent

(Testimony of William Q. Ranft.)

either to Mr. Cobban or to Mr. Catlin under the Stone and Timber Act?

A. No, I should say not. The reason that I have this particular data is that in complying with the subpoena, in consultation with Mr. Hershey, I ascertained from him the numbers of the sworn statements and register's final certificates that he had in Helena, and I took it that my examination would extend to those numbers. Without a particular reference to the records I would not undertake to say that there were no further duplicate receiver's final receipts sent to Mr. Catlin, but I am under the impression that there were more than those covered by the data which I have here.

Q. How many more?

A. That I could not determine either without looking at the records. Mr. Catlin was a practicing land attorney down there, and it was the custom to send the receipts of various clients of his to him.

Q. Now, that book there is a book that is kept in your office? A. Yes, sir.

Q. That is the regular letter-press book?

A. That is what I call the letter-press copy book for letters of transmittal, sending out duplicate receipts. I keep only in that book the copy of the letter which encloses the receiver's duplicate final receipt.

Q. And made in the regular course of your business?

A. Yes, sir; I kept it as a record. It was my purpose in inaugurating this system in the office to get an acknowledgment on the bottom of all of these letters

(Testimony of William Q. Ranft.)

transmitting the duplicate receipts, in order that, if any question should arise as to the miscarriage of the receipt or a claim on the part of a claimant that he had not received the receipt, to be able to produce his acknowledgment of the receipt of that receipt. It very frequently transpired, however, that they paid no attention to the letter, but having kept a copy of it would be part of a record to show that the receipt had been regularly issued and had left the office.

Q. Now, when you speak about the receiver's duplicate receipt having been sent to so and so, what becomes of the other receipt?

A. The receiver's original receipt is attached to all the papers in the case. They are retained in the office until the end of the month, when they are forwarded with what we term the monthly returns to the Department, there to remain until patent issues or some defect in the papers are ascertained or some data that has been deficient has been supplied. They are sent up with the abstracts at the end of the month, the original receipts.

Q. Sent there for the purpose of being filed and kept permanently in the Interior Department?

Mr. BICKFORD.—Objected to as leading.

A. The papers are sent there as a part of the public records of the Interior Department, upon which records is based the issuance of a patent.

Q. Now, then, when in course of time the patent is

(Testimony of William Q. Ranft.)

issued it is sent to your office from the Interior Department in Washington? A. Yes, sir.

Q. And then to whom do you deliver the patent?

A. The patents, since I have been in the office, have invariably been taken care of by the register or one of his clerks in the office.

Q. What I want is, in practice and under the law, does the patent issue to the holder of the duplicate receipt?

Mr. BICKFORD.—Objected to as leading.

A. The person to whom the final receipt was issued, or his or her attorney, is notified and required to produce the receiver's duplicate final receipt, and to that person is handed the patent after having accepted the receiver's duplicate final receipt and taking a receipt in what we call the Patent Book there, the record of patents.

Q. So that as a matter of fact the patent would be delivered by the register or receiver of the local land office to the person who presented to you the receiver's duplicate final receipt.

A. That has been the custom in our office. We take it that the presentation of the receiver's final receipt is authority for the deliverance of the patent to that person.

Q. Now, then, in addition, I will ask you, Mr. Ranft, if, as a matter of fact, you, as receiver of the land office, had a book of your own which you called a blotter, in

(Testimony of William Q. Ranft.)

which were contained the names of persons to whom these duplicate final receipts were sent?

A. Yes, I had such a book and termed it a blotter, and it was made up, having first the date of the receipt of the money, the nature of the entry, the name of the entryman or entrywoman, the amount, the person to whom the receiver's receipt was to be sent, the address of that person, and the date that it was sent.

Q. Have you that book?

A. I have that book at the hotel; I did not bring it here with me.

Q. I would like to have you produce it in the morning, please. A. Yes, sir; I will.

Further hearing adjourned till December 13th, 10 A. M., and all witnesses who are in attendance under subpoena are required to appear at that time.

Friday, December 13th, 1901, ten o'clock A. M.

Hearing resumed pursuant to adjournment. Direct examination of the witness, W. Q. RANFT, continued.

(By Mr. MAYNARD.)

Q. Mr. Ranft, have you with you now the blotter you spoke about last evening?

A. Yes. (Witness produces book referred to.) Yes, what I call the blotter or scratch book.

By Mr. BICKFORD.—May I be permitted to cross-examine the witness?

(Testimony of William Q. Ranft.)

By Mr. MAYNARD.—Yes, sir.

Q. I want to know if that is one of the regular books of the office, Mr. Ranft, one that is required by the rules of the Department of the Interior, or a rule of your office?

A. No, it is a private record, one that I keep entirely for my own convenience.

Q. I will ask you if it is kept for your own convenience and by taking items from another book and putting it into that book?

A. I keep this book for the purpose of keeping the money that comes into the office absolutely straight. As the papers come into the office the money accompanies them, and the money is handed to me with the papers, and the entries are made in this book, which I say is a private book, and then the entries in the official records are made from the papers themselves.

Q. Now, the question in my mind was whether or not that book wasn't made up from the book that you were testifying from on yesterday. Isn't that book made up from this?

A. Well, this is the original book.

Q. And this one is made up from that?

A. That is practically a part of the public records there, and this book, as I say, is one that I keep entirely for myself. Of course there is some information in this book that isn't down in that one.

Q. Then that isn't made from this?

A. No, this is not made from that, because this is a

(Testimony of William Q. Ranft.)

subsequent book to this. This is the original proposition.

Q. It is in fact a letter-book.

A. Yes, a letter-press copy-book, that is what it is.

Q. For what purpose did you keep that book?

A. I kept this book for the purpose of ascertaining the names of the entrymen and entrywomen; the amounts that were paid to me as receiver, the names of the persons to whom the receiver's final receipts were to be sent; the addresses of those persons and the dates upon which those receipts were sent.

(By Mr. MAYNARD.)

Q. When did you commence to keep that book?

A. Immediately after I went into office there in 1897 — August, 1897.

Q. And how long did you keep it?

A. I kept it constantly. Every entry that has gone through the office has gone through this book.

Q. Why did you keep it?

A. Kept it for the purpose of making a check more particularly on the money that came in the office and which was placed upon the official records, and I was able to determine also from this book the exact amount of money that we sent out, which I would put down here, and if there was a surplus or a deficiency, I was always able to notify the claimant, or an attorney acting for a claimant, that the amount was either too much or not enough; and also being able to keep a record as to the

(Testimony of William Q. Ranft.)

dates on which, as I say, the receiver's duplicate receipts were sent.

Q. How many books kept in the office would act as a check upon this, as you have now indicated?

A. How many books aside from this in the office would be a check?

Q. Yes.

A. Well, we have in the office what is called a daily cash book into which all entries, that is, the cash, is actually entered. At the end of each week there are several claims in this cash-book. One is for lands sold, the other is for improvements, and the other is for testimony and fees, and the other is for the sale of Indian lands. Under the procedure in the office—that is, if you desire to have it in this way and desire an explanation of the method of keeping the books—the papers come to the office accompanied with the money. If they happen to be addressed to the register, they are handed to me and I make an entry in this blotter or scratch book and enter the date of the entry, the amount of money and the name of the person to whom it is to be sent, with the address. They are then returned to the applicant for his inspection, and if they are found to be complete and ready to be placed upon record, he returns them and they are entered in the register's book, in a cash book; but if it is for lands that are sold, commuted homesteads, or final timber and stone proofs—for instance, the date, the number, the name of the entryman or entrywoman, his or her address, the description of the land and the amount is entered into a book

(Testimony of William Q. Ranft.)

by him, called 'Lands Sold.' After he gets through entering them the papers are placed upon my desk and I enter them in my official daily cash book, as a part of the Government records, and I send them—after that—they receive the same nature of procedure that the register has given them, and entered in a book that I have called 'Cash Entry Book.' It is practically the same thing that the register has. Now the register's books and my books, of course, would be a check, one against the other. At the end of the month abstracts are made from each of the books, and the totals are bound to be the same. If they are not, why an error of some kind has been committed.

Q. Now, Mr. Ranft, where were you accustomed to keep that book?

A. I kept it in a little closet in a desk in the office, about the center of the office, perhaps.

Q. Kept in the office, you say?

A. Yes, in the office.

Q. Under lock and key?

A. No, I wasn't accustomed to locking it up; I had no occasion to really.

Q. Now, you gave us the long list yesterday of entrymen and entrywomen who commenced proceedings under the Stone and Timber Act, showing that they took up one hundred and sixty acres of land. Now, I will ask you, did you as a matter of fact enter those names in that book?

A. Yes, every entry that came into the office, including those, were entered in this book as a matter of course.

(Testimony of William Q. Ranft.)

Q. Will you please turn to the pages where those entries are now?

A. No, I am precluded from doing that for the reason the pages are not there.

Q. The pages are not there?

A. No, they are gone; they are missing.

Q. How many pages are gone out of that blotter?

A. From pages 85 to 114 inclusive, are missing.

Q. When did you discover the fact that those pages had been abstracted from that book?

A. I discovered that fact the day before yesterday. I looked at my subpoena and I noticed it called for the production of this book, and I called Mr. Avery, who is one of the clerks in the office, with the view of refreshing my recollection, and I started to open the book, and suggested to him that he look at the Cash Entry Book and give me the dates upon which these several entries were made. Before he got, however, to the rack in which that book is kept, I said to him—I remembered that it was during the summer of 1899 that most of these entries were made, and started to turn to the book. I turned back in this manner and got back to 1899, and I discovered for the first time that there were some pages missing. This is the condition of the book as it presented itself to me when I opened it.

Q. The book is now in the same condition as it was when you opened it, as you now testify?

A. Yes, the book is in the same condition now as it

(Testimony of William Q. Ranft.)

was when I opened it, exactly. Of course it is the same record, practically, as that letter-press copy-book that I testified from yesterday, in so far as the names of the persons who entered the particular tract of land about which I testified, and to whom the receiver's final receipts were sent and the dates upon which they were sent.

Q. Where were you and who were present at the time you made the discovery that your book had been mutilated?

By Mr. BICKFORD.—We object, if your Honor please, and move now to strike out all of this testimony of the witness concerning this private book, for the reason it is irrelevant and immaterial, it being shown by the statement of the witness that the book concerning which he is testifying is not a part of the public records; but, on the contrary is a private book kept for his own information and has no relation whatever to the formal entry of lands, and is not a book required to be kept by law or by the rules of the office, and for that reason it is incompetent, irrelevant and immaterial.

Q. How many pages are there that you find have been abstracted?

A. Thirty-one pages, from 85 to 114 inclusive. That is, 84 is here and 115 is here, so I think that makes 31.

Q. Are you able to state what was written on those 31 pages?

A. No, I couldn't state that at all. I can say there was bound to appear on the pages that are gone the names

(Testimony of William Q. Ranft.)

and the number of persons who entered lands and paid money into the land office. Yes, that must have been on those pages.

Q. You say that the names of all the persons that you mentioned yesterday were in that book?

A. Yes, they were bound to have been in that book and on those pages.

Q. And are any of the names that you read yesterday on that book now?

A. No, because the missing pages are those covering the period from June first up to the middle of December, and those entries about which I testified yesterday were made during that same period.

Q. Of '99? A. Of '99; yes, 1899.

Q. Have you any knowledge as to how or when or by what means those pages were abstracted from that book?

A. I haven't the faintest opinion on earth. The first time that I had any information that the pages were not there was when I started to refresh my recollection after I had been served with a subpoena the day before yesterday. It was the first intimation on earth that I had of it.

Q. Had you used the data generally on those pages before this time in furnishing a list—

A. Yes.

Q. —of the entries that had been made under the Stone and Timber Act where the duplicate receipts were given to either Mr. Cobban or Mr. Catlin?

(Testimony of William Q. Ranft.)

By Mr. BICKFORD.—I object to that as leading.

A. Last summer and in the summer of 1900 Mr. Zevely, representing the secretary's office—

Q. The Secretary of the Interior?

A. The Secretary of the Interior's office was furnished with the list taken from this book, covering the entries about which I testified yesterday.

Q. How many men are employed in your office?

A. The actual employees are Mr. Lind S. Catlin—

Q. Who did you say?

A. Mr. Lind S. Catlin is the chief clerk.

Q. Who is Lind S. Catlin?

A. He is the son of Pope Catlin, of Missoula. Pope Catlin is a brother of John B. Catlin. They have been residents of Missoula for years.

Q. Lind S. Catlin is a nephew of John B. Catlin?

A. A nephew of John B. Catlin; yes, sir.

Q. How long has he been employed in the office there?

A. My recollection is that he came into the office in the summer, I think, of 1899.

Q. Has he been chief clerk since that time?

A. At that time we were allowed one clerk by the Department, and he was the only clerk that we had. Later we were furnished another clerk. The increase in the business of the office justifying it, and Mr. Catlin was made chief clerk, and Charles E. Avery is our other clerk. Mr. Hershey is the register and I am the receiver. In the office is another person employed by the Government,

(Testimony of William Q. Ranft.)

and has been ever since we have been there, and that is Mr. J. B. Collins, who is the superintendent of forest reserves for the State of Montana. The man who succeeded him within the past six weeks is Mr. Gust. Moser, acting superintendent of forest reserves. These are the only actual government official employees who are in the office.

Q. Mr. Ranft, you saw and knew of this in a general way, did you not—of these various entrymen and entrywomen that you testified about yesterday?

A. Yes, I saw most of them that came to the office, bound to have seen them—some of them, at least—because I took the final proofs of some of them.

Q. Now, I want you to tell us in your own way and as definitely as you can, who these people were, what their business was and what their station in life was, as far as you know.

A. Well, I think outside of three or four persons that came into the office, that I didn't enjoy a personal acquaintanceship with any of them. I happened to know one or two, just casually, however. The most of them were either from up the Blackfoot country, or people who were occupied on ranches, I fancy, up the Bitterroot valley. One or two instances there were people around there from town. One was a carpenter, whom I recall, George Dilldine, and a man named Reeve, and his son, and Bob Starkey, sort of wood-haulers and one thing and another. I should say from their looks generally, that their voca-

(Testimony of William Q. Ranft.)

tions were those of ranchers or people that worked in the woods.

Q. Are you able to state as to whether they were poor people or not?

By Mr. BICKFORD.—We object to that as being leading, and further upon the ground that it is immaterial as well.

A. If their personal appearances and attire would be a barometer, I should say that they were poor people.

Q. How were they, as far as you are able to say, not having any business with them, and seeing them in and about the office, as to their intelligence?

By Mr. BICKFORD.—We object to the question for the reason that the law is not made specifically to apply to the intelligence of people in the entry of land under the Stone and Timber Act.

A. My judgment certainly is that they were persons of mediocre intelligence.

Q. I will ask you if in the frontier, backswood lumber camp where men had floated in that had no money except as they could earn it from day to day, and women came with them to do any odd jobs that they could do around the camp, and acting in vrious ways where they were dependent entirely how would they compare with people whom you met from day to day, so far as your knowledge of it is concerned?

By Mr. BICKFORD.—I object to the question for the reason it is leading, and upon the further ground that the

(Testimony of William Q. Ranft.)

question presupposes a state of facts which has not been shown; and further upon the ground that it is incompetent; and for the further reason that it is irrelevant and immaterial.

A. The claimants had the appearance of being persons, as I have before testified, who worked either on farms or in lumber camps. That is the information you desired, is it?

Q. Yes, sir. You stated yesterday, as I understand it, that in the discharge of your official duties that most of these—most of the testimony was taken and most of the—work done prior to the payment of the money, was done by the register and his chief clerk.

A. The first step in the matter of the entries under that Act of June 3d, 1878, being known and called the Timber and Stone Act, was made by the applicant subscribing to what is known and called a sworn statement. These sworn statements were almost invariably made before the register of the land office. They had to be sworn to, of course, and my recollection is that Mr. Hershey, being in the front part of the office, the papers were brought in to him and he would swear the claimants. As I recollect it now, in the summer, or rather in October, 1899, Mr. Hershey was on his leave of absence, and then I think that perhaps I swore—in fact, did swear all the claimants that made sworn statements in October, 1899.

By Mr. BICKFORD.—If your Honor please, we want to interpose an objection to both the question and answer,

(Testimony of William Q. Ranft.)

for the reason that it is not the best evidence; the record itself showing before whom these applications were made and sworn to, and for the further reason that it is not fair to the witness to ask him to state concerning a matter which the record itself shows, and he should not be required to give what his recollection was, as the records themselves will show before whom the claimants made the oath.

By Mr. MAYNARD.—We expect to make the records a part of the record in this case.

Q. Well, how long a time are you able to tell us would be occupied—

A. (Witness continues previous answer.) I made the general statement that it is almost the invariable custom that sworn statements under this act are made before the register of the office, and that being so, I reached the general conclusion that in these cases that same proposition was followed; as I say, Mr. Hershey being in the front part of the office, the papers would generally be taken to him.

Q. You may state whether or not when the time came for the making of payments of money, it was received by other members of the office during your absence at times, and the receipts signed by you on the statement being made that the money had been paid.

By Mr. BICKFORD.—We object to that as being leading.

(Testimony of William Q. Ranft.)

A. During this particular period the office was much rushed with business. At that time we had but the one clerk, and if the final proof of claimants would come into the office, we would all take turns at taking the final proof. The money wasn't infrequently paid to Mr. Catlin, the clerk, and Mr. Hershey, and to myself; but naturally and perhaps in the vast majority of instances, the money was paid to me; but in a number of instances, of course, I might not have been there; I might have stepped out for a few minutes, and in that way the money was not infrequently paid over to Mr. Catlin or Mr. Hershey. It was placed in the money drawer and a notation was made that the money was paid, and by whom it was paid. The papers were subsequently made out and I would sign the receiver's final receipt; as well as the duplicate.

Q. You spoke—that the rush of business was at that time. When did it commence?

A. It commenced in June; that is my recollection of it now—1899, in July, I should say, from July on.

Q. And at what time did it end, if it did?

A. Well, the office since that time has been a maximum office with the exception of one or two months That would mean that the business of the office was pretty good; but it was largely in excess of the maximum during the period that these cash entries of timber and stone and the final proofs were made. That was strung out from a period of, I should say, nearly a

(Testimony of William Q. Ranft.)

year, but the greatest part of them—the greatest part was made during the months of July, August, September, October and November, 1899.

Q. Did you have at that time— Had your force been increased? You spoke of an increase in the force. Did you get that extra man during these months?

A. I don't know about that, during those months, I don't recall. If I could ask Mr. Hershey as to his recollection, I could answer. I don't remember when it was that Mr. Avery came in, do you remember, Mr. Hershey? Well, I don't recollect the exact date when the second clerk came into the office.

Q. What is your best judgment about it?

By Mr. BICKFORD.—We object, if your Honor please, upon the ground it is immaterial, and that the records of the office are the best evidence.

A. You know I could tell definitely from the records, and I don't happen to have brought them with me; and it would be just a matter of guesswork entirely for me to suggest; but I should say, I should say, some time in the year 1900.

Q. If that were so, then, during this period of great rush from the spring to the fall of 1899, you didn't have this man?

A. No, I feel quite certain on that point. I may be mistaken, but I feel quite certain that during that period we were without the second clerk.

Q. And during that period are you able to say that

(Testimony of William Q. Ranft.)

the business of the office was such as to keep all the members of the office force wholly occupied during office hours?

By Mr. BICKFORD.—We object to the question as being leading and immaterial.

A. Yes, the business certainly kept us all occupied during the official hours, and sometimes after that.

Q. Now, you say that John B. Catlin—that you have known him how long?

A. I have known Major Catlin, practically ever since I came to the country, which is something over eleven years ago.

Q. And what is his business, is he a professional man? A. No, I shouldn't say so.

Q. A lawyer?

A. No, he isn't a practicing attorney; that is, he hasn't been admitted, as I understand it. He did practice before the land office.

Q. And what was his business during this spring, summer and fall of 1899?

A. Without his having informed me, I should say he was acting for Mr. Cobban as land attorney, as also a sort of an assistant and agent, I dare say, in the disposition of farms and things of that sort around Missoula.

Q. He was associated in business, then as the associate and attorney of Mr. Cobban?

By Mr. BICKFORD.—That is objected to as being leading.

(Testimony of William Q. Ranft.)

A. I should say so, yes.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Ranft, when was the first entry made under the Timber and Stone Act in your office during your incumbency?

A. Well, that would be difficult to say without a complete record before me. I think maybe I might be able to find it if you will indulge me a few moments.

Q. Very well, you may consult the record.

A. The first entry under the act of June 3d, 1878, which was the Stone and Timber Act, was made December 18th, 1897. I don't want to be entirely confined to that, but from this blotter, it was made early in my term.

Q. Now, if you will kindly run over the blotter and tell us when the next one was made.

A. December 29th, 1897. Do you want subsequent ones, Mr. Walsh?

Q. Yes.

A. March 29th, 1898, June 21st, 1898.

Q. That will be enough for the present, Mr. Ranft. What business were you engaged in before you became receiver of the land office at Missoula?

A. I was practicing law.

Q. In the city of Missoula?

A. In the city of Missoula, Montana, yes, sir.

(Testimony of William Q. Ranft.)

Q. And as an attorney at law did you transact any business before the land office at Missoula?

A. I transacted some business; I was associated with Colonel Marshall, at the time, but we didn't have much land office practice.

Q. Well, do you know whether prior to the time you went into the land office there were any entries made under the Timber and Stone Act?

A. Prior to the time I went into the land office, no, I don't recall any timber and stone entries having been made. I didn't have occasion---never thought anything about timber and stone entries at that time.

Q. The matter of the acquisition of lands under the provisions of this act was not then generally known in the community, was it?

A. I should say not from the fact that the valuable timber propositions in that country down there—and that would be a mere guess at it—had not been acquired then.

Q. So that it would appear, Mr. Ranft, to be a fact that along about this time in 1898 and '99, the public attention was directed to the right to acquire timber land under the provisions of that act?

A. Yes, I think there was a sort of discussion of the fact, probably in view of the establishment, perhaps, of indepeudent sawmills that had already been established in the county.

Q. Then, as a practicing attorney in that community,

(Testimony of William Q. Ranft.)

prior to the time that you became receiver of the land office your attention had not been particularly called to the opportunity to acquire land under the provisions of this act? A. No, not at all.

Q. In fact, Mr. Ranft, you yourself didn't know, perhaps of the existence of this act and the opportunities to acquire timber lands under it?

A. I am frank to say that I wasn't at all familiar with that act of June 3d, 1878.

Q. Are you able to say, Mr. Ranft, that it was not a matter of common knowledge in the community at that time?

A. I think I can state that quite positively.

Q. Did it, however—did it not, along about '98 and '99 become commonly known throughout the neighborhood that lands could be acquired by complying with the provisions of this act?

A. Yes, my attention was probably directed to it, in that there were an unusual number of entries made.

Q. I speak now particularly of what you might have ascertained outside of the land office.

A. Well, I think that would depend entirely upon the observations one would give to transactions of that nature and the intercourse one would have with the people who were making these applications.

Q. Yes, sir.

A. I mean by that if one were to notice the transfers that were being made daily, they would become ap-

(Testimony of William Q. Ranft.)

prised of the situation, if they did not enjoy intercourse with the people who made the final proofs; in fact, it would be a matter that would probably be discussed among them.

Q. Now, Mr. Ranft, along about 1899 and 1900, as I understand you, the business in your office very materially increased.

A. Yes, sir. As a matter of course a hundred entries under the Timber and Stone Act—

Q. As a matter of course a hundred entries under the Timber and Stone Act would not make any considerable or substantial increase in the amount of business transacted in your office, would it?

A. Oh, yes, it would.

Q. How many entries did you make in 1898?

A. In 1898, there were not many in 1898, and '99.

Q. No, the entries in your office in 1898.

A. Oh, I couldn't even guess at the number.

Q. Didn't you make a report of the number of entries in that year?

A. Yes, make a report every month and every year.

Q. Well, I am speaking now, Mr. Ranft, of a hundred entries under the Timber and Stone Act, as compared with the actual number of entries of every character made in your office. And do you mean to say that a hundred entries additional would be a substantial increase upon the entries of the year before?

A. Yes, it is the best entries that come into the of-

(Testimony of William Q. Ranft.)

fice. The register and receiver make about ten dollars each out of each timber and stone entry, and the amount received would be about a thousand dollars. The maximum allowed by law is three thousand dollars a piece, so that I say it would make practically a thousand dollars increase, a hundred entries would.

Q. I am not speaking of the amount that was realized, I am speaking of the actual amount of entries.

A. Yes, it would be a substantial increase in the receipts of the office.

Q. I am speaking of the number of entries, Mr. Ranft, and not the receipts of the office.

A. Well, of course a hundred entries would be rather an insignificant number.

Q. That is what I thought. You would expect to make at least fifteen hundred entries a year?

A. . Yes, sir.

Q. At least that number? A. Yes, sir.

By Mr. MAYNARD.—Fifteen hundred entries of what?

The WITNESS.—All sorts of entries, he means. Just indulge me one second. (Witness consults book.) I should say that a thousand entries would be about what that office down there would show, all told.

Q. Annually? A. Yes.

Q. Now, Mr. Ranft, you made a great many entries, did you not about that time, under the Forest Reserve Act?

(Testimony of William Q. Ranft.)

A. You mean that entries came to the office under that act?

Q. Yes.

A. Yes, sir, there was a vast number of them.

Q. A vast number of them. Now, during the course of your incumbency, did you begin to make entries under the forest reserve? I wish you would see what the date of the first entry in there is.

A. There is nothing to determine that because there was no cash entry. They were exchange lands that were put in in April, 1899. The secretary made a ruling which permitted the exchange of lands under that act, and I should say that it was during July, 1899, or rather from July, 1899, on, that we had those entries under that act.

Q. The Forest Reserve Act, do you mean?

A. Yes, sir.

Q. Do you know when the Forest Reserve Act went into effect?

A. It was passed June 4th, 1897, but the instruction with respect to permitting the exchange of unsurveyed lands for those in the forest reserve was not actually made until some time in April, 1899.

Q. But during all of those two years there was no doubt that entries could be made at any time, of surveyed lands?

A. No question about that in the world.

Q. But you don't know that any were made?

(Testimony of William Q. Ranft.)

A. No, I don't recall.

Q. Isn't it a fact that public opinion in the community began to be directed to getting lands under the Forest Reserve Act about the same time, in 1899?

A. I think that was simultaneous.

Q. In other words, there was a desire to acquire timber lands and the prices afforded by these two acts were availed of by a great many people.

A. Yes, I should say that there were perhaps fifty acres of land selected under the forest reserve to one entry selected under the Timber and Stone Act.

Q. The Timber and Stone Act? A. Yes, sir.

Q. Now, I presume, probably, Mr. Ranft, that if a person presented himself there for the purpose of making an entry of timber land, either under the Forest Reserve Act or under the Timber and Stone Act, you didn't decline his application on account of the condition or color of his clothes, or the condition of the clothes that they appeared in?

A. No, sir, we looked at the color of his money.

Q. You never considered that as in any way a detrimental feature upon a man, did you?

A. No, not at all.

Q. You knew of no rule of law or of the Department that would make them unfit subjects on that account for the acquisition of lands under those acts?

A. No, sir, those persons would present themselves; they were sworn and the interrogatories propounded to

(Testimony of William Q. Ranft.)

them, and if they answered correctly and the money would be paid, the entry would be made all right.

Q. I observe that by some of your testimony a Mr. Stephen Tepper made a homestead entry. I wish you would refer to your letter-press copy-book and see if you can find that entry.

A. I find here the letter transmitting the receipt for cash entry of Stephen Tepper.

Q. To whom was it transmitted?

A. To R. M. Cobban.

Q. To R. M. Cobban?

A. Yes, sir, at Missoula, Montana, September 5th, 1899.

Q. Now, have you got entry No. 1062 there?

A. Yes, that is—but I haven't it in this book. That is one of the two that I don't happen to have.

Q. But anyway that is a commuted homestead entry and it went to Mr. Cobban?

A. Yes, to Mr. Cobban, with the receiver's duplicate final receipt.

Q. How does it come, Mr. Ranft, that you ever delivered the final receipt to anyone but the entryman?

A. That perhaps has happened more frequently in the office than the delivery is made to the entryman. The entrymen are usually laymen employing attorneys for the purpose of making out their papers. After they make their final proofs, usually they request that receiver's duplicate final receipt or any homestead with receiv-

(Testimony of William Q. Ranft.)

er's duplicate receipt to be sent to their attorney for the purpose of allowing their attorney to inspect the receipt to see if it complies with the law. At any rate, I take it that when the entryman employs an attorney that he desires to have his attorney pass upon the paper.

Q. And if he has an attorney at all in the matter, why what course did you pursue with reference to the sending of the receipt—as to whom you would send it, I mean?

A. Practically it is invariably sent to the attorney.

Q. Now, you make a good many homestead entries in your office, don't you?

A. Yes, sir, we do. We had an unusually lengthy list last month.

Q. Now, I wish you would state whether this increase in the volume of business that you speak of occurring in your office, during the year 1899 and succeeding years, if it did not as well increase the number of homestead entries?

A. Yes, it did. The increase, I think, occurred through nearly all the entries.

Q. Every class of entry, you mean?

A. Yes, sir, homestead, final homestead, desert lands, final proofs under the Claggett Act, act of June 5th, 1892, in fact, the office has been a maximum office ever since.

Q. That is, the class of entries have increased in numbers during these years?

(Testimony of William Q. Ranft.)

A. Yes, sir, they have.

Q. Now, do you find it occurs some times that a man in making a final proof upon his homestead, or at least in commuting his homestead, borrows money upon the land with which to make the final payment?

A. I dare say that is done; I understand it is permitted under the law to be done. I have known times that I have made examinations in final proofs and it has not transpired that in the examination that he borrowed money, but I understand the rules permit him to do so, though.

Q. You do know, as a matter of fact, that a great many homestead claimants borrow money with which to make their final proofs, particularly if they commute, and then after the final proof has been made and certificate has been issued they give security by executing a mortgage on the lands?

A. I don't know that is done; I don't recall any particular instance.

Q. And don't you also know, as a matter of fact, Mr. Ranft, that in cases of that character the entryman frequently desires and directs the sending of the final receipt to the party from whom the money is borrowed? Isn't that a common occurrence in those matters?

By Mr. MAYNARD.—He says that he knows nothing about it of his own knowledge.

A. The final homesteads, as a rule, do not cost to exceed twenty-five dollars, and the money, of course, isn't

(Testimony of William Q. Ranft.)

often borrowed; and we haven't had any commuted entries, and I know nothing of the circumstances which you have just detailed.

Q. You don't recall any instance of that kind?

A. I don't recall any instance.

Q. And the matter has never come under your observation at all, that the homestead entryman would direct that the receipt be sent to someone from whom they had borrowed or was intending to borrow some money on the land after he had acquired title to it?

A. Well, in this instance, probably, for instance the claimant, requested that final receipt be sent to Mr. Cobban. The testimony didn't show that, if I took it; I don't recall now about his testimony, whether it developed the fact that he borrowed the money or not, but he did direct that the final receipt be sent to Mr. Cobban.

Q. But as I understand you, you don't know what the reason was that actuated him in directing that the receipt be sent to Mr. Cobban?

A. No, I do not. It would be conjecture on my part.

Q. Well, now, you think that the failure to have a record of the delivery of the Stephen Tepper receipt and one other receipt in the letter-press copy-book, was owing to an accidental omission of it?

A. Yes, in the rush of business, I think perhaps that letter wasn't copied. The probabilities are that the receipt may have been handed to the claimant right there.

Q. Now, as to this rush of business, Mr. Ranft, you

(Testimony of William Q. Ranft.)

actually did despatch the business, the rush of business?

A. We actually did despatch the business, you say?

Q. Yes. A. Yes.

Q. You stayed there until it was done?

A. Oh, yes, we did actually despatch the business, and get out our reports at the end of the month.

Q. Has your attention been called to any of these timber and stone entries under investigation that have not been regularly made out?

A. I think I don't quite understand the question.

Q. I said has your attention been called to any of these timber and stone entries under investigation, and as to whether or not the papers in them were not properly made out and regular in every respect.

A. I don't know of an instance that they came back.

Q. So that can you tell us any particular instance, Mr. Ranft, in which your proceedings would have been any different from what they were provided you had had ample time to transact this business?

A. No, I think that every member in the office discharged his duties and that the questions were asked just the same as they would be now.

Q. So that the questions were asked and answered just the same as if you hadn't had this rush of business?

A. Just the same.

Q. Now, Mr. Ranft, all of the questions put to the claimant as well as to his witnesses are all framed on

(Testimony of William Q. Ranft.)

blanks furnished you by the Interior Department, are they not? A. Yes, sir.

Q. The Interior Department prescribed a certain set of questions which were to be propounded to the claimant and his witnesses?

A. Yes, they furnish the blanks.

Q. And these questions were propounded?

A. They were propounded, and in a number of instances, perhaps, most of them, the questions and answers were reread.

Q. Now, are these same blanks in use, Mr. Ranft, still? A. The same blanks?

Q. Yes, sir.

A. Oh, there are now some additional blanks which require a very close investigation of the conditions financially of the claimant, and the purposes for which timber is being acquired, and ascertaining minutely just exactly the reasons for the acquisition of the land.

Q. And when were those blanks first furnished you?

A. About eight months ago, I should say, shortly after the investigation of these alleged timber depredations.

Q. Were all of these forty-eight entries that you have spoken of in detail all paid for in cash, or were they paid in scrip?

A. All in cash in our office.

Q. Now, you say Mr. Caflin is a land attorney?

A. Yes.

(Testimony of William Q. Ranft.)

Q. What is the course of procedure prescribed by the rules of the department for the admission of an attorney to practice before the land office?

A. They require ar application to be made and then it is forwarded to the i epartment, to the commissioner of the general land office, and placed on record there.

Q. So, that the admission is not made by the local office but by the commissioner?

A. Yes, sent to the commissioner and he passes on the proposition.

Q. What evidence of any character is supplied together with the application?

A. A United States commissioner, I believe, usually endorses the application. The commissioner advises our office that the applicant has been placed on the list of attorneys practicing before his office.

Q. And he is recognized as such then before your office until further action is taken concerning the matter?

A. Yes.

Q. Do you know how long Major Catlin has been practicing as a land attorney before the Missoula office?

A. Major Catlin, I should say has been a practicing attorney before the Missoula land office before I got there. Let us see, '93—I fancy from '94 up to the present time.

Q. Had he ever been connected officially with that office in any way that you know of?

A. He was the first receiver. He was the receiver in

(Testimony of William Q. Ranft.)

any event of the land office in '91 up to '93 or '94—'93, I think.

Q. Where does he live at present?

A. He lives in Missoula at present.

Q. How long has he lived there?

A. He has lived there recently about three years.

Q. What did you say?

A. About three years recently. Prior to that time he resided at Hamilton, which is perhaps the largest town up the Bitterroot valley.

Q. That is in the county—adjacent to the county in which the Missoula land office is situated?

A. Yes, sir.

Q. And in the same land district? A. Yes, sir.

Q. What business was he engaged in at Hamilton?

A. He was in the real estate business and practicing land law. We had entries from him frequently.

Q. While he was residing at Hamilton?

A. At Hamilton, yes, sir.

Q. So you pursued the same course while he was residing at Hamilton, with reference to the delivery of final receipts in cases in which he acted for the claimant?

A. Yes, the receipts were sent to Mr. Catlin the same as they are to other nonresident attorneys.

Q. What have you to say as to the prevalence of timber lands in the county of Ravalli, the county in which the city of Hamilton is situated?

(Testimony of William Q. Ranft.)

A. The condition of it?

Q. No, the prevalence.

A. Well, there is some timber up the valley. Of course, it is not nearly as abundant there as it is in Missoula county—not nearly so.

Q. Do you know whether Major Catlin ever acted as attorney for parties seeking to enter timber lands? Seeking to enter timber lands in the Bitterroot valley while he was at Hamilton?

A. I don't recall a single instance in which he acted as an attorney for timber and stone claimants. This was mostly agricultural land up the valley and he acted for claimants under the act of June, 1872.

Q. What is this Claggett Act that you speak of?

A. That is an act which permits an individual to enter lands in what is called the Bitterroot valley.

Q. That act is quite restrictive in its character?

A. Absolutely to what is known as the Bitterroot valley.

Q. Embracing how many townships?

A. I think they call it fifteen townships. There is a good deal of controversy about that, as to where the actual survey limits prescribed by the Secretary of the Interior, are.

Q. Now, speaking of this rush of business and the making of these entries under the Timber and Stone Act, and the Forest Reserve Act, in 1889?

A. In 1899, you mean.

(Testimony of William Q. Ranft.)

Q. 1899. I desire to ask you whether or not about that time extensive tracts of land covered with timber were not also surveyed and made available for entry under the Timber and Stone Act?

A. There were a number of tracts surveyed and the plats came to our office. I couldn't say whether they were for that or not.

Q. I didn't ask that. I asked if there were not at —if there were not large tracts covered with timber also surveyed and for which you received plats?

A. That would be available under that act?

Q. Yes. A. Yes.

Q. And that had not theretofore been available under that act? A. Yes, sir.

Q. Now, what information did you give to the public of the receipt of patents at your office?

A. You mean to the public generally, or to the claimants?

Q. Well, the public generally.

A. We didn't make it a business to give out a report of those things, but when the newspaper men came around and asked us whether there was any news, we gave them whatever news we had, and among other items he was told of the patents that had been received and the persons for whom they were, and in that way it got into circulation.

Q. As a matter of general news; but you didn't ordinarily publish the receipt of patents at the land office.

A. No; that is, we didn't formally.

(Testimony of William Q. Ranft.)

Q. Isn't it a fact that if intervening the time of the making the entry and receiving the patent, the entryman has conveyed away his land, the grantee presents himself at the receiver's office and gets the receiver's receipt? A. Yes, sir.

Q. He presents himself at the office for the purpose of getting the patent too? A. Yes, sir.

Q. So that as a matter of fact you ordinarily present the patent to the grantee, in case the lands have intervening the time been granted?

A. We deliver the patent to the person who presents the receiver's final receipt.

By Mr. MAYNARD.—The receiver's final duplicate receipt?

A. Yes, the receiver's final duplicate receipt.

(By Mr. WALSH.)

Q. What evidence, if any, is presented by the party holding the receipt to his right to the possession of the receipt?

A. We take it that that is ample authority, and we know in every instance the person who presents the receipt, and take the receipt as evidence of their authority to the possession of the patent, and we deliver the patent to the person who presents it.

Q. Is it ordinarily endorsed by the entryman?

A. No.

Q. I wish you would tell us what information is given

(Testimony of William Q. Ranft.)

by this blotter spoken of this morning, as a blotter, and from which certain leaves have been extracted?

A. It embraces the information as to the date of the receipt of the application in the office, the nature of the entry, the entryman or entrywoman, the amount of money transmitted with the entry, the person to whom the receiver's receipt—the receiver's duplicate final receipt is to be sent, the address of that person and the date upon which the receipt was sent or some disposition made of the money paid.

Q. Now, what information conveyed by this book is not equally conveyed by the letter copy-book and the record of the register?

A. The date of the receipt of the entry.

Q. That is all? A. That is all.

Q. Doesn't the register's record show the date when the entry was made?

A. Why, yes, and the receiver's books show that too. Sometimes an entry might be received two or three days before it is entered on the official record, however. There may be a deficiency, and if so, it will lie on the table for a few days, but this will show the exact date when it is paid.

Q. Except for any discrepancy of that kind, the information conveyed to the public by this book may also be got from the letter-press copy-book and the register's record of the entry?

A. Yes, except where the money is returned to the claimant. If the entry is rejected and the money re-

(Testimony of William Q. Ranft.)

turned, of course, there is official evidence in the office too. So that practically the same facts could be got from an examination of the register's books.

Q. Now, what do you say was the name of your chief clerk? A. Lind S. Catlin.

Q. I wish you would state whether Mr. Catlin is familiar with this letter-press copy-book that you have here? A. Yes.

Q. I will ask you also whether he is familiar with the register's record of these various entries?

A. Yes.

Q. He knows what is contained in these various books, does he? A. He does.

Q. And the other gentleman in your force, what have you to say as to his familiarity with these books, and the information conveyed by that?

A. Well, we are all familiar with the entries that are made in the register and receiver's books, for the reason that we all participate in getting up the monthly reports and the abstracts of the official record.

Q. Who besides your office force had access to this book denominated by you a blotter, since the first day of January, 1900, we will say?

A. Well, aside from the office force, the only persons whom I knew to have any access to the office were J. B. Collins, superintendent of forest reserves for Montana, and a man named Westby, who is the janitor.

Q. Any agents or representatives of the government ever have any access to these books?

(Testimony of William Q. Ranft.)

A. No, not any.

Q. What did you say?

A. No, no one else has access to the office except those whom I have mentioned.

Q. Were they ever examined by Mr. Zevely?

A. I think they were never examined by Mr. Zevely. I am quite sure they were not. I made a record of them myself and handed a copy of the contents to Mr. Zevely.

Q. Mr. Zevely didn't examine the original books himself?

A. I don't know that he ever saw this book.

Q. Did he ever see the letter-press copy-book?

A. I am quite certain he did not. I don't know that he ever knew we had it.

Q. Did he ever examine the register's record?

A. I don't know as to that. He examined some of the receiver's official books at one time, that was prior, however, to this investigation, with a view to inspecting the office slightly—somewhat, but I am sure he never saw this book, and the contents of this book were given to him by an abstract.

By. Mr. MAYNARD.—By yourself?

A. Yes.

Q. You made the abstract yourself?

A. Yes, with the assistance of one of the clerks, I made the abstract.

(Testimony of William Q. Ranft.)

(By Mr. WALSH.)

Q. Now, speaking of the intelligence of these others, these stone and timber entrymen and entrywomen. Would you say that S. C. Catlin was a person of mediocre intelligence?

A. No, I wouldn't say that. I didn't enjoy a personal acquaintanceship with Mrs. Catlin, and I don't know that I ever talked with Mrs. Catlin.

Q. Would you say that Harriet O'Brien was a person of mediocre intelligence?

A. I must confess that I don't know her; or rather, I never had any personal acquaintance with her.

Q. You wouldn't undertake to say that she was a school-teacher, would you? A. No, I wouldn't.

Q. What would you say about the education or intelligence enjoyed or possessed by Clara Bell Nicholls?

A. I don't know that I recall her either.

Q. Now, Mr. Ranft, would you feel qualified to venture an opinion as to the comparative intelligence of these people who made these timber and stone entries, these forty-eight people, as compared with the intelligence enjoyed by people who made entries under the homestead act in your office?

A. I think they enjoyed the same degree of intelligence, and I want to say that I didn't mean that as any reflection on those people, but I do say that most of them whom I saw were unfortunate enough, perhaps, not to have had an education, and that being so, it natur-

(Testimony of William Q. Ranft.)

ally followed that they didn't have the same degree of intelligence as persons who had received an education.

Q. Well, they were about the same class of people, weren't they? A. Yes, sir.

Q. They were about the same class of people as those that took up homestead entries and settled upon the public domain.

A. I think that is absolutely so.

Q. Now, I would like to ask you about this entry of Effie Kilburn. What would you say as to her intelligence?

A. I didn't take her final proof, I think. I may have, but I don't know that I have ever seen Mrs. Kilburn, I know her husband, however.

Q. What would you say, about John Murtagh.

A. I recall John Murtagh. I wouldn't consider he was a man who enjoyed a very splendid education, but referring particularly to the people whom I mean when I suggested that they were uneducated, I meant to refer to men like Robert Starkey, and John B. Reeve, and Robert Healy, and a number of other entrymen and entrywomen. I say, however, that I don't mean that as a reflection or a slight at all.

Q. Well, they averaged up with the men and women who go out on the frontier and file on a piece of land with a view to taking the same up under the homestead act? A. Yes, sir.

Q. These people eventually become very good citizens, your observation confirms, does it not?

(Testimony of William Q. Ranft.)

A. Yes, sir, there are a number of them do. There is no question about that.

Q. Now, what do you actually know, Mr. Ranft, about the relations existing between Mr. Catlin and Mr. Cobban?

A. You mean their business relations, of course.

Q. Yes, sir.

A. I am bound to conclude that Mr. Catlin was acting for Mr. Cobban in that he directed all of the receiver's duplicate final receipts to be sent to him.

Q. To whom?

A. By Mr. Catlin to Mr. Cobban, and I know that he was disposing of a number—at least I understood that he was selling lands for Mr. Cobban, and I naturally inferred that he was connected with Mr. Cobban.

Q. He gave directions then about these final receipts? A. Yes, sir.

Q. I wish you would tell what direction Mr. Cobban gave to you about these final receipts?

A. I don't recall but a few instances in which Mr. Cobban gave any direction at all.

Q. Mr. Cobban, at that time, was acquiring considerable tracts of land under the Forest Reserve Act, was he not? A. Yes, very considerable.

Q. He made a large number of entries at your office? A. Yes, sir, a good many.

Q. Who acted as his attorney in the making of those entries?

(Testimony of William Q. Ranft.)

A. I think he acted for himself in most of those entries.

Q. Are you sure that Mr. Catlin didn't act with him?

A. Well, now, I don't know. These entries are made entirely through the register's books; I have nothing to do with them. I never saw them and never see them, and that would be a matter of casual observation on my part, if I did see them. We got no fees. They are not passed from any books except the books over which the register has supervision.

Q. Then you mean to say, Mr. Ranft, that you are not able to say whether he did or did not act as attorney for him in the making of these forest reserve entries.

A. Not definitely, no, sir.

Q. How old a man is Mr. Catlin?

A. I should say that—not knowing, that Major Catlin is sixty-five years old.

Q. Lived in Missoula county for a good many years, hasn't he?

A. I know him to have lived in Missoula county for at least eleven years, and I have understood that he first lived—that he has lived in that country up there for twenty-five or thirty years.

Q. Were there any final receipts under the timber and stone entries sent to Mr. Catlin other than those forty-eight that you read off, or is that the aggregate of all the receipts sent to him?

A. Well, I think there were others, but I think it

(Testimony of William Q. Ranft.)

would necessitate a search to ascertain. I couldn't tell that without searching through this book to see.

By Mr. HERSHEY.—If I could be permitted, I could call Mr. Ranft's attention to them.

By Mr. WALSH.—I wish you would do so, Mr. Hershey.

By the WITNESS.—I am quite sure there are some others.

By Mr. HERSHEY.—I will tell you where you will find some without any delay at all. In that memorandum that you have made up you will find them there. Turn to the receipts and you will find them.

(Witness takes paper referred to and looks over it for the information required.)

(By Mr. WALSH.)

Q. Can you tell us now of any entries in which the final receipts were sent to Mr. Catlin that are not entered in these forty-eight that you have testified concerning?

A. I have such entries before me now, being Cash Entries Nos. 1196, 1197, 1198, and there are other entries of a similar character.

Q. You are not able now to tell how many, Mr. Ranft, were sent during the year 1899, for instance, that are not included?

A. No, it would require a search for some time to

(Testimony of William Q. Ranft.)

disclose them. I find one or two others here, if you want them.

Q. You have found one or two others, you say?

A. Yes.

Q. Well, we will not proceed with that any further, Mr. Ranft. A. All right.

Q. Now, did you tell us, Mr. Ranft, how many timber and stone entries were made during the year 1899?

A. Why, I don't undertake to say, and I wouldn't without an examination of the official record.

Q. You think at least there were more than a hundred?

By Mr. MAYNARD.—He says he don't know without an examination of the record.

A. Well, it would be a matter of conjecture. I wouldn't undertake to say how many there were, but I suppose the best evidence would be the books themselves, and they will disclose just exactly how many were made.

Q. Now, do you know of any persons in Missoula besides Mr. Catlin, that were devoting their energies at this time to practicing as land attorneys?

A. Yes, sir.

Q. Who were they?

A. Robert Fisher, John M. Evans, Joseph M. Dixon, A. L. Duncan, William M. Draffen, Thomas C. Marshall and Henry C. Stiff.

(Testimony of William Q. Ranft.)

Q. Well, did you pursue the same course with those gentlemen with reference to final receipts?

A. The final receipts are almost invariably sent to the attorneys. It sometimes happens that an applicant is right there, and in that case, the receipt is handed right to the claimant.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Ranft, you say that since the discovery by the Interior Department of the United States of these frauds that have been committed upon the public domain, that they have promulgated new and additional rules.

By Mr. WALSH.—We object to the question, for the reason that it assumes that two facts have been proven, viz.: That frauds have been committed against the Government, and that new rules have been promulgated by the Department, neither of which is in evidence; and assuming further that the witness has so testified, when in fact he has not.

A. Since an investigation has been had with respect to these alleged timber depredations, the office has been supplied with additional blanks in the matter of final timber and stone proofs, both for witnesses and for claimants.

Q. And these blanks were supplied how many months ago?

A. In the neighborhood of eight or nine months ago.

(Testimony of William Q. Ranft.)

Q. Have you any of those blanks with you, Mr. Ranft? A. No.

Q. Are they in the city, do you know?

A. I should fancy not.

Q. (By Mr. MAYNARD, addressing Mr. HERSHEY.) Have you got any of the blanks referred to with you, Mr. Hershey?

By Mr. HERSHEY.—No, I have not.

Q. I request that you furnish me with these blanks, Mr. Ranft.

A. Well, we will be glad to send them.

Q. In a general way, Mr. Ranft, describe these blanks now.

A. Those are blanks having on them questions to be propounded to witnesses who appear before the land office to substantiate their claims to the sworn statements made under this act of June 3d, 1878, and in the blanks of the witnesses it is evident that it is desired to be ascertained by the department, that the entryman or entrywoman is acting in good faith in so far as the acquisition of the lands containing the timber, and is intended for the—

By Mr. WALSH.—Well, now, we object to the witness testifying to the contents of these blanks, because the blanks themselves are the best evidence of the contents thereof, and we also object to the witness stating his conclusions as to what the purpose of the department is

(Testimony of William Q. Ranft.)

in the propounding of the particular questions which are propounded in the blanks.

A. I want to say that that conclusion is based upon specific instructions received from the department, to make an effort to ascertain the exact conditions under which these lands under this act are being acquired, it being the evident intention of the department to ascertain whether the lands are all acquired for the sale, use, and benefit of the entrymen or entrywomen.

Q. Well, what else?

A. As to his or her financial condition, and as to his or her present and past occupation for the last six months, and whether the lands are purchased for speculative purposes, and whether it is the intention of the claimant to dispose of the lands immediately after acquisition for the purpose of realizing in advance on the money paid for the land.

Q. Since those rules were promulgated by the Department and received by you, have any entries been made?

By Mr. BICKFORD.—We object, if your Honor please, because it is irrelevant and immaterial, and relates to a time subsequent to any time mentioned in the bill of complaint filed in this cause, and therefore can have no relation whatever to the matter in controversy here.

Q. —Under the Stone and Timber Act?

A. There have been a number of entries since we have begun the use of these new blanks.

(Testimony of William Q. Ranft.)

Q. Are you able to state that the practice under the new orders and the new methods is radically different from that which existed before?

A. The practice is the same, except in so far as these new blanks are used.

Q. But the information sought is of a much more searching character than before, is it not?

By Mr. BICKFORD.—Objected to as being leading, and further as calling for a conclusion from the witness.

A. These new blanks are very probing.

Q. And as a matter of fact, during the spring and summer and fall of 1899, the department confined itself to propounding questions that were in the printed blanks furnished by the department and filling them out?

By Mr. BICKFORD.—We object to that as being leading, in the first place, and in the second place, because it is not the best evidence of the facts sought to be proved in this cause.

A. I think I testified on cross-examination that the department furnished blanks that contained printed questions which were to be propounded and those were the ones that were used at the time these entries were made and the final proofs taken.

Q. I am now inquiring as to the practice in effect when the entrymen or entrywomen came in, that is, two witnesses, or say two witnesses, that these blanks were

(Testimony of William Q. Ranft.)

used and filled out, and that was the extent of the examination of the entrymen or entrywomen, and the witness? A. Yes, that was the procedure.

Q. Now, I want to inquire for my own knowledge, if that letter-press copy-book contains all of the data and all of the information that is contained in your book that you have called the blotter?

A. It contains it all except the date of the reception of the money; in other words, it contains in most instances the character of the entry, who the entryman or entrywoman is, the amount of money paid, and to whom the receiver's final duplicate receipt was sent and the date upon which it was sent.

Q. And both of these books contain the item to whom the duplicate final receipt was sent? A. Yes, sir.

Q. Is there any book kept in the department in the land office which contains the information as to whom the duplicate final receipts are sent?

A. No, there is not any other record of it than that which is contained in these two books.

Q. Very well. Now, then, these pages that were abstracted contained in that information, did they not?

A. Yes, sir.

Q. Well, then, is it not true that had the pages in the letter-press copy-book which contained the same information, that there would have been no data in your office by which it could be determined to whom those final receipts were sent?

(Testimony of William Q. Ranft.)

By Mr. BICKFORD.—We object to that as being leading, and further for the reason that it does not prove or tend to prove any issue raised by the pleadings in this cause, and further, because it is not the best evidence, the books themselves being the best evidence of the facts sought to be proved.

A. There is no other evidence in the office except that which is contained in these two books, that would disclose to whom the receiver's duplicate final receipts had been sent.

Q. And in the case now under examination, without those papers abstracted, the sole record evidence of the fact is contained in that letter-press copy-book?

A. Yes.

Q. Now, then, you may state as to whether or not among these forty-eight entries under the Stone and Timber Act, there were two that were nonresidents of this State, and residents of Essex County, Massachusetts?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, for the reason that the law of Congress providing for the entry or sale of land under the Timber and Stone Act, makes no restrictions with reference to the residence of the person so making entries. That the privileges of the law are extended to citizens of the United States or those who have declared their intention to become such, and make no requirement whatever as to the residence of persons making the en-

(Testimony of William Q. Ranft.)

try or the application to enter, and that any person having the qualifications prescribed by law is at liberty to make entry under the law.

A. Yes, the record shows that there were two persons who made the sworn statements and followed this up with final proofs, and who alleged themselves to be residents of Essex County, Massachusetts.

Q. Do you know their names?

A. Yes, their names are Hardy. I think, not seeing them. Yesterday I noticed, and I can recall it by looking over this. (Witness refers to papers lying on the table in front of him.) Yes, Elvira M. Hardy and John Hardy.

Q. Do you know who they are?

A. No, I don't, I don't recall whether I took their final proofs or not, but I am inclined to think I did not.

Q. Do you know anything about them?

A. Don't know a thing on earth about them, no.

Q. Do you know of their existence other than the fact of their names appearing there?

A. Well, I know that persons alleging themselves to be Elvira M. Hardy and John Hardy must have appeared before the land office and made sworn statements and subsequently final proof but whether they were these persons in fact, of course I don't know.

Q. Of course, they are persons that might have appeared there and given that name and that residence, that is what you mean, isn't it?

(Testimony of William Q. Ranft.)

A. I mean there were two persons appearing there, who gave their names as John H. Hardy and Elvira M. Hardy.

Q. Of Essex County, Massachusetts?

A. Of Essex County, Massachusetts, yes, and made these sworn statements and subsequently final proofs.

Q. And do you gather that fact solely from the record evidence; you have no personal knowledge of that fact, have you?

A. I have no personal knowledge or recollection of their having been there, and still I may have taken the final proofs, but still I don't recall it. The record would show that.

Q. Still, the record shows that these two people, hailing from Massachusetts, received receiver's duplicate final receipts—or rather, they were sent to Mr. Catlin, does it not, or to Mr. Cobban?

A. The receiver's duplicate final receipts in these two instances were sent to John B. Catlin, November 11th, 1899.

Recross-examination.

(By Mr. WALSH.)

Q. You have lived in Missoula County, I believe you told us, about eleven years, Mr. Ranft?

A. Something over eleven years.

Q. There are quite extensive tracts of stone and timber lands in that county?

A. Yes, they are still there.

(Testimony of William Q. Ranft.)

Q. And the lumbering business has been carried on in that county for at least a period that covered the time that you have lived in that county?

A. At least that, and I know for a much longer period.

Q. You know the character of the lands contemplated by the Stone and Timber Act, do you not—for entry under the Stone and Timber Act, under its provisions? A. Yes.

Q. Now, I wish you would tell about what purpose a person who enters a hundred and sixty acres of land under the Timber and Stone Act in Missoula county, can put it except to sell the land, or to sell the timber on the land?

By Mr. MAYNARD.—That is objected to, as not being recross-examination of any matter that was brought forth on the redirect examination, and as calling for a conclusion from the witness, and the opinion itself is objectionable.

A. The character of the land is bound to be of such a nature as to be absolutely valueless for any other purpose than for the timber or stone that is upon it. That being so, the persons acquiring land under that act, were acquiring them solely and absolutely for the purpose of disposing of the timber in some way, or the stone that is upon the land.

Q. That is to say, it is contemplated that either they will cut the timber upon it and sell it to someone, or will

(Testimony of William Q. Ranft.)

cut the timber down for their own use. You don't know of any other use that it would be put to.

A. Absolutely no other use.

Redirect Examination.

(By Mr. MAYNARD.)

Q. But as a matter of fact this land would be valuable for agricultural purposes after the timber was cut down, wouldn't it?

By Mr. BICKFORD.—We object to counsel testifying.

A. These questions are specifically asked the claimant, and one question particularly is whether the land would be valuable for agricultural purposes after the timber were removed, and a negative response is required to that question before the register and receiver will approve the application.

Q. Mr. Ranft, have you any present knowledge of any of these lands—any personal knowledge, from any personal investigation or examination of them?

A. Why, I have not.

Q. And so that your information is confined solely to propounding the questions contained in the blanks, and the answers thereto. A. That is entirely so.

WM. Q. RANFT.

Subscribed and sworn to before me this 15th day of April, A. D. 1902.

HENRY N. BLAKE,
Examiner in Chancery.

STIPULATION.

It is hereby stipulated by counsel for the respective parties, that any witness holding a public office, who may be unable from any cause to personally appear before the Examiner and correct, sign and verify his testimony, may do so before any officer authorized to administer oaths within the State of Montana.

Recess until two o'clock P. M. same day.

HENRY N. BLAKE,
Examiner in Chancery.

THOMAS B. BRYAN, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Mr. WALSH.—May it please the Court, we consented the other day to discontinue the examination of the witness, Mr. Griswold, for the purpose of permitting the examination of some public officers, whom we understood would be excused in just an hour or so. We had not yet completed the examination of Mr. Griswold, and my understanding was that the witnesses tendered would occupy only a very short while, and we would resume the examination of Mr. Griswold. I think we shall now insist, if the Court please, that the examination of the witnesses shall be concluded before any other witnesses are examined. We are in the same position with respect to Mr. Greene, also, and we insist at this time that Mr. Griswold

(Testimony of Thomas B. Bryan.)

shall take the stand and that his examination shall be concluded before another witness is called.

The EXAMINER.—Any objection to that?

Mr. MAYNARD.—Yes, sir; simply this: We have four or five witnesses here who are called simply to testify to what they know about particular locations.

The EXAMINER.—How long will they take?

Mr. MAYNARD.—It will take but a comparatively short time, and then they can go home, and we can see no reason why they should be detained here at a great loss to themselves and expense to the Government and so on when they could be examined and discharged.

The EXAMINER.—You had finished with Mr. Griswold, hadn't you?

Mr. MAYNARD.—Yes, pretty near; and then we anticipated that the cross-examination would probably take a day or so.

The EXAMINER.—Well, let Mr. Bryan be examined, then.

Mr. BICKFORD.—If I remember, if your Honor please, this same excuse was given with reference to the examination of Mr. Greene and also the placing of Mr. Jemison on the witness-stand; it was urged as a reason for putting him on the stand, that it would only take a short time to get through with his testimony.

(Testimony of Thomas B. Bryan.)

Mr. MAYNARD.—Well, I didn't anticipate it would take so long.

The EXAMINER.—Well, let them examine Mr. Bryan. As to Mr. Greene, I don't think we will recall him now.

Mr. WALSH.—No, sir, we don't ask that as to Mr. Greene, but these witnesses who testify as to the facts, we ought to have the opportunity to cross-examine them promptly after giving their testimony.

(By Mr. MAYNARD.)

Q. Mr. Bryan, what is your full name?

A. Thomas B. Bryan.

Q. How old are you?

A. I am forty-three years old.

Q. Where do you live now?

A. Well, my home really is at Clearwater. I have my family in Missoula, though, the children going to school there, but my home, I claim, is in Clearwater.

Q. Montana? A. Yes, sir.

Q. What is your occupation?

A. Well, I am a laboring man, working at most anything I can get to do.

Q. I will call your attention directly to the inquiry as to whether you know or do not know of L. T. Bryan, Edgar Lehman, and Belle Bryan having made locations under the Stone and Timber Act?

A. Well, yes, sir, they made locations to that effect.

Q. When?

(Testimony of Thomas B. Bryan.)

A. It was in June, as well as I remember now, two years ago; that would be in—

Q. 1899, that would be?

A. 1899, yes, sir, in June.

Q. Some time when, did you say?

A. It was just after the 19th of June; I can't tell just exactly what day, but it was just after the 19th of June, because I quit work then.

Q. Who is L. T. Bryan; what is the first name?

A. Lelia Thadia Bryan is her name, really.

Q. Who is she?

A. She is a sister of mine.

Q. How old a woman is she?

A. She is twenty-four years old.

Q. Is she married or unmarried?

A. She is a single lady.

Q. Single then and now? A. Yes, sir.

Q. What does she do?

A. She teaches school most of her time.

Q. Who is Edgar Lehman?

A. Edgar Lehman was just an acquaintance of mine; that is about all I can tell you.

Q. Where does he live?

A. I don't know now where he is; he lived here at that time, in Montana.

Q. How long had you known him at this time?

A. I have known him ever since he was a small boy.

Q. What does he do?

(Testimony of Thomas B. Bryan.)

A. Well, he worked—he was a common, ordinary worker, worked at farm work, ranch work.

Q. How old a man? A. Now?

Q. Yes, now.

A. Well, he must be—I would think that he was—as to telling his real age, I couldn't do it, you know, just exactly, but I would think he was twenty-four years old, twenty-three or twenty-four; somewhere along there; I couldn't tell just exactly.

Q. Who is Belle Bryan?

A. Belle Bryan is a daughter of mine.

Q. How old is she?

A. She is twenty-four years old.

Q. What does she do?

A. Well, she is at the present time—her and her husband runs a hotel at Clearwater postoffice, Powell County.

Q. She afterwards married Mr. Gilles?

A. Yes, sir.

Q. And is now Mrs. Belle Bryan Gilles, and is keeping a hotel at Clearwater?

A. She is married to another man now, by the name of Evans.

Q. Oh, Gilles died? A. Yes, sir.

Q. Where was she living at the time these locations were made?

A. She was living with her mother at Missoula, going to school, at that time.

Q. Did you have a talk with any one relative to these

(Testimony of Thomas B. Bryan.)

relatives of yours making locations under the Stone and Timber Act?

Mr. BICKFORD.—Objected to as immaterial.

A. Yes, sir.

Q. Who is the person?

Mr. BICKFORD.—The same objection.

A. Well, the first person I talked with in regard to the matter, I think, was Mr. Griswold.

Q. Where did that conversation take place?

A. I think it was at Mr. Griswold's hotel there, where he lived at that time, at Clearwater.

Q. You were living near Clearwater yourself at that time?

A. My home is five miles—the place I term my home—it is my homestead—is five miles above there.

Q. Five miles above Clearwater postoffice?

A. Yes, sir, but at that time I had been working for Mr. Boyd for quite a while; he lives seven miles up the Blackfoot. I had been working for him quite a while, for a year very near, almost all the time.

Q. Did you go to see Mr. Griswold about these locations?

Mr. BICKFORD.—Objected to; leading.

A. Yes, sir, I approached Mr. Griswold on the subject as I came down from where I was at work at Mr. Boyd's.

Q. Where were you when you did this?

A. I was right there; I just now answered the question; at Mr. Griswold's hotel.

(Testimony of Thomas B. Bryan.)

Q. What did you say to him?

Mr. BICKFORD.—Objected to; hearsay; also irrelevant and immaterial.

A. Well, I asked him in regard to this. I had understood from my daughter at Missoula—

Mr. BICKFORD.—We object to any conversation with his daughter. Our objection went to the conversation with Griswold, and we make the same objection now to the conversation with his daughter.

A. She had asked me to see him, so I saw him when I was coming down.

Q. She had asked what?

A. She had, through a letter, asked me to see him. She had learned there in Missoula by some means or other that she had a right to this timber and stone timber claim, and she asked me, and stated that she would like to take it, and wanted to know why she couldn't, and she insisted on it till, as I came down, going to Missoula, I stopped there and I approached Mr. Griswold on the subject and asked him some particulars. I can't tell you everything that was said between me and Mr. Griswold, but the whole substance was that I just asked him about the claims, talked with him, and really I think we talked, as well as I remember, about what there would be in it for a man to take up a timber claim, and we didn't agree by some means or another. I couldn't state exactly the reason we couldn't agree, but we couldn't in fact.

Q. What was the subject of your agreement?

(Testimony of Thomas B. Bryan.)

A. The subject was just this, that he said that by the time a man would pay the expenses on this land that they wouldn't realize over a hundred dollars out of it.

Q. What man would pay it?

Mr. ZEVELY (In an undertone).—Any man.

A. Any man.

Q. Any man couldn't realize over a hundred dollars?

A. Yes, sir, and I think, as well as I remember, that I told Mr. Griswold that if that was the case there was no use for me to undertake that, because I didn't think it would be satisfactory.

Q. That is, that one hundred dollars and expenses wouldn't be enough?

Mr. BICKFORD.—Objected to; leading.

A. No.

Q. Well, go ahead.

A. Then it ceased right there, and then, as I saw that we disagreed, I don't think me and Mr. Griswold talked about the matter any longer. He was the first man, and that is the way that it came up.

Q. Who was present at that time?

A. I couldn't tell you whether there was anyone present when me and him was talking or not. Now, of course, it is this way; there might have been more said at the time between me and Mr. Griswold, but that is the substance of the whole thing. I can't remember; I didn't have any idea of this being ever drawed up in my mind whatever; I didn't note everything down that was

(Testimony of Thomas B. Bryan.)

said between me and Mr. Griswold, therefore I couldn't tell you just everything that was said; I have done the best I could in regard to that.

Q. Well, now, you couldn't agree on the amount that you should get for these timber claims, and then what next did you do; what did he tell you to do or what did he say to you?

Mr. WALSH.—Objected to because the witness has not said that they were not able to agree on the amount that he was to get for the timber claims, and it assumes the witness as having testified to certain matters to which he has not yet testified, the testimony of the witness being to the effect, and to the effect only, that he inquired of Mr. Griswold how much there would be in it for a man to take up a timber claim, and that Mr. Griswold told him that, after paying for the land and the expenses, he would not be able to get more than about one hundred dollars in addition thereto for the claim.

Q. Just before you leave this point, did Mr. Griswold, when you went to see him on this particular occasion in regard to these claims, did he tell you for whom he was working?

Mr. BICKFORD.—Objected to; leading, also irrelevant and immaterial.

A. Well, I guess he did in a way.

Q. Whom did he say?

Mr. WALSH.—Objected to; leading.

A. The first I knew anything about that—I think the

(Testimony of Thomas B. Bryan.)

first thing that Griswold ever said to me in regard to who he was working for, I was waiting there after we had this conversation for the stage. I think the stage was to be there that night, and I had made my mind up that I would wait and take the stage and go down to Missoula. That day at noon, or about noon sometime, maybe just before, Mr. Griswold came into the house, and he tells me—he says, "The gentleman is here now from Missoula, that may be you can do business with," something to that amount—"out here in regard to those land matters," talking about this land, and then he tells me that it was Mr. Cobbans, and I think he said that he was the man then—maybe he told me and maybe he didn't—that he was working for. That was the first thing I knew anything about who Mr. Griswold was working for. He says, "He is out here," and I don't remember what I said to him exactly, but anyway he insisted that I should go out and he would give me an introduction to Mr. Cobbans and so I went with him and he did. I think maybe he stated there, and if it was, likely that was the first time, and I think it was, that he said anything about the man that he was working for.

Mr. BICKFORD.—We move to strike the answer out, because the witness does not state it as a fact, but as something which may have occurred, and something which perhaps he said, but does not state that it is anything that was actually said or anything which the witness actually knows or testifies concerning from his own knowledge.

(Testimony of Thomas B. Bryan.)

Q. Do you recognize in the room the Mr. Cobban that you were introduced to at that time by Mr. Griswold; do you see him here now?

A. Yes, sir, Mr. Cobbans is here.

Q. The man sitting there between Judge Bickford and Mr. Walsh? A. Yes, sir.

Q. Did you then have a conversation at that time and place with Mr. Cobban? A. I did.

Q. What about?

A. Well, pretty soon after we was together, we commenced talking about this same matter, in regard to timber. I approached Mr. Cobbans, I think, about the same way I did Mr. Griswold in regard to the land matters, talking about those claims.

Q. Now, go right on and state just as clearly and as concisely as you can the first thing that you said to Mr. Cobban at that time, and then give the whole conversation, just what you said to him and what he said to you.

A. Well, it was as well as I remember, just about same, that I told Mr. Cobbans that I understood that there were people taking up timber claims up the river there, and I think I told him that I had talked with Mr. Griswold, and we hadn't agreed, couldn't agree about the matter, and that my daughter and my sister would like to have a claim provided they could get it, and I think I asked him about what the claim would be worth, and as well as I remember he said—

Mr. BICKFORD.—Right at this point I want to interpose an objection to any conversation that was had be-

(Testimony of Thomas B. Bryan.)

tween the witness and Mr. Cobban, for the reason that it is hearsay and also that it is irrelevant and immaterial.

A. (Continued.) I think I asked Mr. Cobbans what there would be in it, what a man would realize out of it; I think I asked him that question, and after he figured a little bit he told me about how the expenses and all would cost about the same that Mr. Griswold did, and that a person would realize about one hundred dollars out of the timber claim.

Q. Then what?

A. Well, I think, I am pretty sure I talked with him just about the same as I did with Mr. Griswold, and then he—

Q. What do you mean by that; just tell us what you said to him.

A. Well, I told him that I didn't think much that they would be willing to do that, and I told him—

Q. That they wouldn't be satisfied with one hundred dollars?

Mr. WALSH.—Objected to; leading.

Q. Proceed, Mr. Bryan.

Mr. WALSH.—The witness seems to be fully able to tell what talks he had with Mr. Cobban.

A. Then, after I had told Mr. Cobbans this—

Q. After you had told him what?

A. After I had told him that if a person couldn't realize over one hundred dollars out of it, I didn't hardly

(Testimony of Thomas B. Bryan.)

think it was worth while for me to go any further with it, because I didn't believe they would be willing to do it; and I don't know how it came around just exactly, but anyway there was something said in regard to expenses, paying expenses, and he told me that if a person would pay the expenses, their own expenses, it might realize them a hundred and fifty dollars apiece in a timber claim. I said something to Mr. Cobbans about I didn't think they would have the money to pay those expenses, and he said then that he would furnish them the money to pay the expenses, fifty dollars apiece, and then, they would realize, if they saved anything out of the fifty dollars, they would get that over and above the hundred dollars. I studied this matter over, and I told Mr. Cobbans that I would go and look for some land before I went to Missoula, and if I found some land that I thought would do, that is, that would justify to take it, I would report to those people, and then, if they liked, they could go ahead and prove up on the land, but I didn't tell Mr. Cobbans there and then that they would do it, because I didn't know whether they would or not. He said all right, to go ahead, and so I did. I found some claims there—

Q. Wait a minute. Have you stated now all the conversation that you can remember, or the substance of it?

A. You mean in just the substance of the whole conversation?

Q. With Mr. Cobban.

A. The substance, I think I have, if my memory

(Testimony of Thomas B. Bryan.)

serves me right; it was just an understanding there, as I have stated, that—

Q. That what?

A. That they could realize one hundred and fifty dollars.

Mr. WALSH.—We object to the witness stating anything about any understanding that there was, or stating anything except the actual conversation that took place at that time between himself and Mr. Cobban.

Q. Before you were interrupted by Mr. Walsh, just finish your answer now.

(Last question and answer read.)

Q. One hundred and fifty dollars net, or was anything to be taken out of the fifty dollars?

Mr. BICKFORD.—Objected to; leading.

A. No. Understand, the expenses was to come out of that hundred and fifty dollars; I think I stated there that there was to be their expenses out of that one hundred and fifty dollars.

Q. Very well. Now, they were to receive that money from Mr. Cobban?

Mr. WALSH.—Objected to; leading.

A. Well, of course, Mr. Cobbans was to let them have the money.

Q. Now, then, what were they to do on their part?

A. Well, it was an understanding as I stated—

Mr. WALSH.—We object to the witness giving any understanding about the matter or telling anything

(Testimony of Thomas B. Bryan.)

about this matter except the conversation had between him and Mr. Cobban, that is to say, what he said and what Mr Cobban said.

A. (Continued.) —that they was to pay the expenses themselves and get this hundred and fifty dollars.

Q. And then what were they to do?

A. They was to realize that amount.

Q. For what? A. Why—

Q. What was he to get? A. Mr. Cobbans?

Q. Yes, from them.

A. Well, I don't—I can't say that it was any understanding positively that he was to get anything, only that they was to go ahead and prove up on this land, file on the land and prove up on it.

Q. Then, after they had proved up on the land, what were they to do with the land then?

A. Well, it was an understanding that they was—

Mr. BICKFORD.—We object to the understanding.

Mr. MAYNARD.—You have objected to it three or four times.

Mr. BICKFORD.—Well, we will object to it again.

A. (Continued.) Well, as a matter of course, it was an understanding that they were to prove up on this land and get a title to it, and to sell the land—

Q. To whom?

A. —and pay the expense of it—

Q. And sell the land to whom?

A. Well, I couldn't say that there was ever any bar-

(Testimony of Thomas B. Bryan.)

gain who to; Mr. Cobbans was to have his money all right enough. Mr. Cobbans—just wait a minute, we will just rehearse back as to the understanding; that will bring something to my memory. Mr. Cobbans says to me, when I was talking with him there, "Now," he says, "I will furnish this money and you go ahead and prove up on this land." And when I told him then that I would go and locate this land and if those people filed on the land it would be all right, would it, he says, "Yes, go ahead." This was with the understanding that he was to let them have the money, and he says, "All I want is my money back or the land." He says, "I want either my money back and ten per cent," as well as I remember, he says, "or the land"—to buy the land. As a matter of course we understood that Mr. Cobbans was in the real estate business, and that he would like very well to buy the land; we understood it that way, and so he made that proposition. Well, then I told him, I says, "I will locate the land, and if they take it up, why, it would be all right, they will go ahead and file on it, and then make everything all right."

Q. Now, do you mean to say, sir, that you did not at that time and place have a distinct and positive agreement with Mr. Cobban that you were to take and prove up these claims for these three persons and another, and that you were to receive a definite sum of money from him directly upon proving up, in consideration of their deeding to him these descriptions?

(Testimony of Thomas B. Bryan.)

Mr. BICKFORD.—We object, because the question is leading; because it is cross-examination of his own witness, and because it is irrelevant and immaterial.

Mr. WALSH.—Namely, what understanding was had. The only proper matter for inquiry being the conversation that was had between the parties, namely, what was said by Mr. Cobban and what was said by Mr. Bryan.

A. Now, as to my receiving—

Q. I don't say you receiving—

The EXAMINER.—Let him answer the question.

A. As to my receiving, I never—there was no agreement from Mr. Cobban to me that I was to receive this money; I don't think I ever testified to that, that I was to receive it.

Q. I didn't ask you that.

A. I thought that was the question.

Q. I asked you if you did not make an agreement with him then and there, not that you were to receive the money, but that three persons that you now have named, and one other, were to receive a definite sum of money in consideration of their deeding the land to him.

A. Why, of course; I think I testified to it right there.

Q. How much were they to receive?

Mr. WALSH.—We object to the question put to the witness a moment ago, because it is leading; we object also to this question for the same reason, and for the further reason that the witness can be interrogated only

(Testimony of Thomas B. Bryan.)

in reference to the conversation had between him and Mr. Cobban, and he has already given that conversation, and it does not appear that he had a right to enter into any agreement for any other person concerning the transactions inquired about.

A. I stated twice, I think, that it was one hundred and fifty dollars.

Q. Apiece?

A. Apiece, and they were to pay their own expenses; I never testified that they was to realize a hundred and fifty dollars clear.

Q. No, I didn't say that you did.

A. I never did that; I testified to that twice.

Q. After this conversation, did you go on to the locations that were made by these three persons and one other? A. Yes, sir.

Q. Whom did you go with?

A. On one of them locations I went on it alone, and the other with the man by the name of Gilles.

Q. That is your son in law?

A. Yes, sir; and at one time; then afterwards me and Mr. Griswold was on this land, the same land, ourselves.

Q. On the four claims?

A. No, on the one claim I speak of; and then again me and Mr. Griswold and Mr. Lehman—this Mr. Lehman was on two of the other claims—well, on three; we were on the three together.

Q. Now, calling your attention to the first claim, whom did you say you went with, Mr. Gilles?

(Testimony of Thomas B. Bryan.)

A. Mr. Gilles the first time, and then me and Mr.—

Q. What location was that?

A. That was in section twenty-six.

Q. Who took that up?

A. Well, I will just say to the Honorable Judge that that involves my wife; that location does, and I don't wish to testify against her at all in the matter.

Q. Very well.

A. Under no circumstances.

Q. The second location, then, Mr. Bryan.

A. Well, the second location was, as well as I remember—I think it was the one Mr. Lehman taken.

Q. That he afterwards took up?

A. Yes; that he afterwards taken up.

Q. Who went with you?

A. The first time I went on it alone; I went there by myself; the next time me and Mr. Griswold and Mr. Lehman, all three, was on it.

Q. You went there first yourself?

A. Yes, sir.

Q. How long were you there?

A. I was on that section—

Q. On this particular location, this particular description; how long were you there?

A. Well, I couldn't say how long I was on that location,because I was all day from early in the morning—I left Clearwater postoffice before daylight, and I went on the section early in the morning, and I was there all day. To say what length of time I was on this claim

(Testimony of Thomas B. Bryan.)

that Mr. Lehman taken, I couldn't say just exactly how long I was on that claim, but I was on it any way, because I was on every forty that day that there was in the section; I was through them all.

Q. You went on all these different locations on that one day?

A. No, two of them. I remember that was in section six. One of those locations is in twenty-four, but those two—

Q. What did you do on that day when you went on this land?

A. Where those two is, Lehman's and my daughter's?

Q. Yes.

A. Well, I just only looked over this timber and estimated it the best I could, and found out where the best timber was; that was my business there, and I didn't follow anything else that day.

Q. And had nothing to do further with those two locations, except on this one day, did you?

A. No, sir; that was all.

Q. Well, Mr. Lehman went with you, then?

A. No, sir; not on that day.

Q. Who was with you?

A. No one; I was by myself that day.

Q. The next time you went, you went with Mr. Griswold, did you?

A. Yes, sir; the next day; I came back that night; it was late when I got into Clearwater, and he asked me what I found over there—

(Testimony of Thomas B. Bryan.)

Mr. BICKFORD.—We object to any conversation between Mr. Griswold and the witness, as hearsay evidence.

Q. Then what?

A. I told him I thought I found a couple of good claims in there; I says I think I did, and it seems to me like he wanted— I says, "I want you to go with me tomorrow and look over the timber," and he wanted to postpone that.

Q. Well, I don't care anything about that.

A. Anyway, we went the next day and Mr. Lehman went with us.

Q. Where did Mr. Lehman come from?

A. As well as I remember, Mr. Lehman was boarding there then.

Q. Boarding at the Griswold House?

A. I won't be positive about that, but that is my recollection now.

Q. Was he a stranger to you? A. No, sir.

Q. You had known him before that?

A. Yes, sir; I testified there that I had known him from a kid.

Q. Then, as a matter of fact, you went on the ground and made two other locations?

A. I went on that ground and we made the two, the only two that was made on that section six.

Q. Then the next locations were made when?

A. They were made in a day or two; I don't know whether it was the day after Lehman and myself and

(Testimony of Thomas B. Bryan.)

Mr. Griswold went on to this land; I don't remember whether it was the next day or the next day after that, but it was just in a day or two after we were on Mr. Lehman's, where he taken, that we went on twenty-four.

Q. Then what did you do?

A. We located there a claim for my sister.

Q. And located the one for your daughter before that, on section six?

A. Yes, sir; the same day we located Lehman.

Q. Where were these ladies then?

A. My daughter at that time was in Missoula.

Q. And where was your sister?

A. She was teaching school there near Clearwater.

Q. Then what next did you do?

A. After I had located this land,I think I went with my sister on this land; I am pretty sure I did before—the next thing that I did, I taken her and we went on to this twenty-four, the claim in twenty-four.

Q. How long was your sister on the land?

A. Well, I couldn't say; she was up—

Q. An hour? A. Perhaps so.

Mr. BICKFORD.—We object to counsel suggesting the answer.

Q. Perhaps so, you say? A. Yes, sir.

Mr. BICKFORD.—Let us put in the objection, please; we object to counsel suggesting the answer to the witness.

Q. You say perhaps an hour?

(Testimony of Thomas B. Bryan.)

A. Yes, sir; or maybe two; I don't remember exactly. We were on the land, I know that; I didn't keep the time.

Q. How about your daughter; did you go with your daughter? A. Yes, sir.

Q. How long were you on with her?

A. Well, perhaps we were up there on that section half a day, going and coming to and on the land.

Q. How far was the land from where you say you were going and coming; where did you start from?

A. Well, it is four or five miles from Clearwater.

Q. Four or five miles there, and four or five back and the whole time consumed was how much?

A. Half a day or such a matter.

Q. Then, after you did this, what did you next do?

A. It seems to me like I went to Missoula, and after I told my daughter the story that I have just told you; the conversation that was between me and Mr. Cobbans; she made up her mind that she would go up there, and I went up there with her and carried her on the land, and we looked the land over and went back to Missoula.

Q. Did your entire party go to the Land Office at Missoula?

Mr. BICKFORD.—Objected to; leading.

A. No, sir; they didn't; they couldn't do it, because there was three of those divisions we are speaking of that was in the Helena land district, and they had to go to Helena.

(Testimony of Thomas B. Bryan.)

Q. Did you go with them?

A. No, sir; I did not.

Q. So you don't know what took place in Helena?

A. No, sir.

Q. Who went with the three to Helena, if you know?

A. Well, I couldn't say who went there to do the filing; I couldn't say who went with them. They went, and that is all I know about it.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Bryan, you told us that your attention was first called to this matter by a letter that you got from your daughter? A. Yes, sir.

Q. From Missoula? A. Yes, sir.

Q. Have you got that letter with you?

A. No, sir; I haven't; I don't know anything of it at the present time, because I guess it is destroyed.

Q. Now, when did you see it last?

A. That letter—well, I couldn't say when I seen it last; it went, I guess, like a great many other letters that way. As I told you here once before—

Q. I just asked you when you saw it last?

A. I don't know that I seen it only just a short time right at the time I received it, perhaps may be a month or such a matter; it might be before I got away with it.

Q. You don't know what became of it?

A. No, I don't; it went like a great many other waste papers.

(Testimony of Thomas B. Bryan.)

Q. If you searched among your papers at home, you might still be able to find it, I suppose?

A. Well, I don't know.

Q. You could not say whether you would or would not? A. No, sir; I cannot.

Q. But anyway you had a talk with Mr. Griswold and asked him how much there would be in it if a man took up a timber claim? A. Yes, sir.

Q. And what answer did Mr. Griswold make to you?

A. Well, I just stated—

Mr. ZEVELY.—An answer by letter; was it a written answer?

Mr. WALSH.—He has not said anything about a written communication.

A. As I stated here once before, he told me that a person couldn't realize over one hundred dollars out of a claim.

Q. And you said after paying whatever expenses there were? A. Yes, sir.

Q. And after paying for the land and whatever expenses there were—

A. There wouldn't be over one hundred dollars coming.

Q. And then you had a talk with Mr. Cobban about the matter? A. Yes, sir.

Q. And you asked Mr. Cobban substantially the same thing?

A. Yes, sir; something near the same.

(Testimony of Thomas B. Bryan.)

Q. And you say that Mr. Cobban then figured on the thing a while? A. Yes, sir.

Q. Now, just exactly what did he figure?

A. I couldn't tell you now what he figured, because I couldn't enumerate the figures that he made then; in fact, I really don't know that I ever see any of his figures that he made, but I know that he made a calculation and told me about the same that Mr. Griswold did at the first.

Q. Do you know what figures entered into his calculation?

A. No, sir; I don't; I suppose he was making a calculation of what it would cost, or something to that amount; I don't know.

Q. He didn't say anything about that?

A. He just only told me what I told you.

Q. Did he tell you anything about the figures, that he allowed so much for the land, four hundred dollars?

A. No, sir; he didn't say anything about that at all.

Q. You don't know what the basis of his figures was at all, then?

A. No, sir; I couldn't tell you what the basis of his figures was.

Q. But, anyway, he told you that whatever money he advanced to anybady for the purpose of getting the land, he would want that back with ten per cent interest?

A. Yes, sir; he said something to that, provided they didn't leave him have the land; provided, when they got the title to this land, they didn't let him have the land,

(Testimony of Thomas B. Bryan.)

he would want his money back, and ten per cent interest on it.

Q. That is to say that the entryman could either pay him back the money he advanced, with ten per cent interest, or if the entryman wanted to sell the claim to him, he would buy the claim?

A. Well, now, I have stated about what he said, and you would have to conclude on that yourself, the meaning of it, because that was the conversation.

Q, Very well, Mr. Bryan, we will have to get the conversation if you can't give us the effect of it. Give us the conversation practically now as it took place. You asked him in the first place what a man could realize out of a timber claim.

A. Yes, sir.

Q. And then he figured on the matter?

A. Yes, sir.

Q. And what did he say?

A. He told me just about the same that I told you.

Q. What did Mr. Cobban say, please?

A. He said a person would realize one hundred dollars out of it.

Q. Then what did you say?

A. I made him the same answer that I stated a while ago, that it was not enough, or something to that amount.

Q. Well, go on now and tell us just exactly what you said and what he said as near as you can recollect it.

(Testimony of Thomas B. Bryan.)

A. Well, I believe I spoke once and said right there in that clause that every little thing I couldn't remember. The substance of it was he said something then about us paying expenses, by them paying their own expenses, something to that amount, and then he said if they could do that they might realize something out of it, they might save something in this fifty dollars. I think I stated that just awhile ago.

Q. Yes.

A. That would make them one hundred and fifty dollars and the expenses away from it.

Q. What else?

A. I don't know—what is your question?

Q. Well, I wanted you to give us just what the conversation was between you and Mr. Cobban, and you told us that you asked him what a person could realize out of a timber claim if he took it up, and he told you that he could get about one hundred dollars out of it after paying all expenses and for the land. You then told him that that was not enough; then you said he said something about them paying the expenses, and if they would pay the expenses themselves they would realize something more, whatever was left out of the fifty dollars? A. Yes, sir.

Q. Now, do you remember anything else that was said?

A. I think I told Mr. Cobbans then that I would locate this land, and then if the parties desired it they would go ahead and file on the land.

(Testimony of Thomas B. Bryan.)

Q. Now, anything else?

A. That is the substance of the conversation that I remember between me and Mr. Cobbans right at the present.

Q. Now, I wish you would think carefully and see if you can recall anything else?

A. I don't know that I remember anything else right now.

Q. So far as you recollect that was all the conversation you had with Mr. Cobban?

A. Yes, sir, that is all I remember at the present time.

Q. Now, Mr. Bryan, to refresh your recollection, I call your attention to the fact that you have not here said anything at all about Mr. Cobban having said that he would want to get his money back with ten per cent interest on it.

A. Well, I said that once.

Q. Well, you did once, but I asked you now to state the conversation, and we started in with what you said you asked him about how much could be got out of a timber claim.

A. Well, he just told me what I told you there before.

Q. I would like to know where that came in.

A. Where that came in—

Q. Just a minute. We will go over it again. You asked him how much a person could realize out of a timber claim in case he took one up?

(Testimony of Thomas B. Bryan.)

A. Yes, sir.

Q. He figured the matter up and he told you he could realize about one hundred dollars?

A. Yes, sir.

Q. Now, at the point in the conversation where this talk about his getting his money back comes in I wish you would stop me and tell me, please. Then you said you told him that you didn't think that was enough, and then he said something to the effect, that provided they paid their own expenses, they could realize something more, namely, whatever was left out of fifty dollars over and above the expenses?

A. Yes, sir, that is right.

Q. Now, was there anything more, and if there was anything more and there was anything said about his wanting to get his money back out of it with ten per cent interest, I wish you would tell us how that was said and when it was said?

A. Well, it was said right in the conversation, while we were talking.

Q. What was said?

A. He just remarked, when I told him that—I told him right there, I think it was right near that part of the conversation, that he just only remarked something in regard to—I can't go right over it as he did, but my understanding was that he would leave them have this money, to get the substance of the whole thing, he would just leave them have this money, and when the

(Testimony of Thomas B. Bryan.)

land was proved up on and they got title to the land, they must settle with him for the money that he had let go; that was straight the substance as near as I can tell.

Q. And they were to pay him back the money with ten per cent interest?

A. He said something about the money and ten per-cent interest.

Q. Yes, or else they could convey the claims to him if they wanted to?

A. Yes, that was the understanding and substance of the whole thing.

Q. And they could get out of it one hundred dollars over the expenses?

A. He left the impression that there was a market for the land for that amount; that is the whole thing in a nutshell; there would be a market for the land for that much.

Q. At that price?

A. Yes, sir, and if anything occurred that he didn't—that the land wasn't given over to him, why, he was to have his money back.

Q. In other words, it was this in substance wasn't it, Mr. Bryan, that he agreed to advance whatever money was necessary to pay the expenses of locating the land and to pay for the land and to make final proof, and then the person who took up the land could either pay him back the money that he had advanced with what-

(Testimony of Thomas B. Bryan.)

ever interest was agreed upon, or else they could convey the land to him, and there was a market for it at that price; wasn't that the fact, Mr. Bryan?

A. Well, it is a matter of course, as I stated once before to you, that it seemed as he was in the real estate business—but then he wanted the land or he wanted his money back; that was the impression that he left there with us.

Q. Now, Mr. Bryan, I should like to inquire of you if you have now given all of the conversation between yourself and Mr. Cobban on that occasion substantially as it occurred and as far as you can remember?

A. Yes, sir, I gave you the details of the conversation between me and Mr. Cobban as far as I can remember now.

Q. You don't recall anything more?

A. Not at present.

Q. Now, I would like to understand from you, for the purpose of aiding your recollection about the matter, whether you had any different conversation with Mr. Cobban with reference to your own claim than you had with reference to these other claims?

Mr. MAYNARD.—He didn't have any claim of his own.

A. I didn't have no claim.

Q. Or have you given all the conversation that took place?

A. I think I have given you the details.

(Testimony of Thomas B. Bryan.)

Q. Did you take up a claim?

A. No, sir, not in this case, I never.

Q. No timber and stone claim?

A. Well, yes, I had taken a timber and stone claim four or five years ago; you will find that on record in the Helena land office.

Q. Where is your claim?

Mr. MAYNARD.—I object to that as immaterial and irrelevant; that was taken up four or five years before these proceedings ever commenced or were ever thought of.

A. Well, I haven't thought of it in so long that I don't believe I can locate it; it was in the Helena land district, over near in this same settlement, though.

Q. How long after you made final proof did you convey that land?

A. Well, I couldn't say exactly how long it was.

Q. To whom did you convey?

A. I sold the land to Mr. Blanchard.

Q. How much did you realize over and above what you put into it?

Mr. MAYNARD.—I object to all of this as immaterial and irrelevant.

A. I got about one hundred and seventy-five dollars.

Q. Over and above what you put in?

A. Yes, sir, that is, that is my recollection now; I think that is right.

(Testimony of Thomas B. Bryan.)

Mr. MAYNARD.—I move to strike that question and answer out on the ground that it is immaterial and irrelevant and not legitimate cross-examination, as this claim of Mr. Bryan's was taken up several years before these proceedings were commenced.

Q. You knew, then, at the time you had this conversation with Mr. Cobban about how much money it would require to take up a timber claim, didn't you?

A. Well, I had an idea.

Q. You had taken up one of your own?

A. Yes, sir.

Q. And of course you know what amount of money it took to take up your claim?

A. Yes, sir, I knew something near about. I don't know that I knew just exactly; the laws may have changed to some extent; it might, maybe, have taken a few dollars more or the expense might have been a few dollars less, I couldn't say.

Q. But you knew about what it would cost?

A. Yes, sir, I knew in the neighborhood of what it would cost.

Q. Had you ever worked in the timber, Mr. Bryan?

A. I worked in the woods a good deal of my life.

Q. You went out as I understand you, and selected this land yourself?

A. Well, yes; as I told you, though, there was parties went with me; I told you there was parties on the land with me.

(Testimony of Thomas B. Bryan.)

Q. Didn't you go out the first day by yourself?

A. Yes, sir, there was one day I went out by myself.

Q. Wasn't that the first day?

A. No, that was the second day; I told you that the first day Gilles went with me.

Q. Now, where did you select the land?

A. It was in section six, two of the claims was as I stated, and in section twenty-four, township fifteen north, range fourteen west.

Q. Where were they with reference to the river?

A. Three or four lies on the east side of the Clearwater and six lies on the west side.

Q. How far away?

A. Well, I couldn't tell you just exactly unless I had the map.

Q. How generally are they wooded; how extensively are they wooded?

A. You mean the timber that is on them?

Q. Yes.

A. As I stated, two of those claims in six is pretty well timbered; I don't remember now—

Q. What is the nearest stream to them?

A. The Clearwater is the nearest to six and twenty-four, there isn't much difference between the Clearwater and the Blackfoot river.

Q. You didn't tell us yet about how far they are from the river.

A. Well, I guess they are somewhere near three

(Testimony of Thomas B. Bryan.)

miles—twenty-four is three miles or something near that—two and a half or three miles from each water-course, and six is right near—yes—I don't know but it corners—yes, it does corner right down on the river, that section six.

Q. It reaches right down to the river?

A. Yes, the corner reaches right down to the river.

Q. Why did you locate those particular tracts?

A. Well, I was looking for the best claims I could find, and those was the best that I could see and find; that was the reason why.

Q. What elements entered into the consideration of what would be a good claim; what did you take into consideration?

A. Well, I would think that my consideration would be a million, or twelve hundred and fifty, or fifteen hundred or somewhere along there would be a very good claim if I could get that.

Q. That is, you took into consideration the amount of timber that was on it? A. Yes, sir.

Q. You tried to get a claim first that had a good large quantity of timber on it? A. Of course.

Q. And you also took into consideration, I suppose, nearness to the water?

A. Yes, sir, the nearer I could get to the market the better it was.

Q. And with reference to those elements and every other element that went to increase the value of the

(Testimony of Thomas B. Bryan.)

claim, you tried to take up the best claims you could possibly find?

A. Of course, that was the intention at the time.

Q. Why did you want to pick out particularly good claims, Mr. Bryan; what difference did it make to you whether they had much or little timber on them?

A. Well, if I hadn't got claims that had reasonable timber on them, it wouldn't be satisfactory with anyone, or with parties that might—that had made the offer that they had to us and if it didn't estimate something—estimate up along in there somewheres, why really there would be no market, they wouldn't want the timber. I could have went out on the prairie as to that there and located the land there, a man would never got the market for it then. They had to get good claims; it was understood that they had to get a claim—anyone would think at once that they had to get a claim with timber on it. If it didn't have timber on it or stone on it you couldn't no way prove up on it; you couldn't make your proof on the entry. That is the reason why.

Q. But you didn't stop with finding a claim that would be just simply satisfactory or that would pass muster, but you went and got one that was the very best that you could possibly find?

A. That is what I did; I don't deny that.

Q. You did that so that these people could the more readily dispose of their claims if they wanted to and for the best price they could get, wasn't that your idea?

(Testimony of Thomas B. Bryan.)

A. Of course, yes, sir.

Q. Now, were you a witness for any of these friends of yours, Mr. Bryan?

A. Well, I will tell you, I can't say for certain, for I were here in Helena and whether they used me or not I can't say; I were called here, though, and the records in the office will show more about that, because I can't remember.

Q. You came here to be a witness?

A. Yes, I were called here for a witness, one of the four.

Q. By whom?

A. I don't remember now whether it was Lehman—perhaps I was called in the Lehman case and my sister's, and I might also have been with my daughter, but whether I acted or not I can't say.

Q. Your recollection is that you were called as a witness for all three of them?

A. Well, no, I don't know that I was called for all three of them, but a part of them, some of them at least I was, but I can't tell you whether I acted or not.

Q. But you did come here?

A. Yes, I was here.

Q. Why didn't you testify?

A. If I didn't, I suppose they had witnesses enough without me.

Q. But, as I understand you, Mr. Bryan, you had yourself prior to this time taken up a timber claim?

A. Yes, sir.

(Testimony of Thomas B. Bryan.)

Q. You knew that the entryman was required, did you not, to make an affidavit at the time the application was made that he had not made any contract or agreement to convey this land to anybody?

A. Yes, sir, I knew that.

Q. You were not endeavoring to get your daughter to testify falsely about that matter, were you?

A. Well, of course, I didn't term it that way at that time.

Q. You yourself came down here, as I understand you, for the purpose of being a witness for her?

A. Yes, sir.

Q. Or, at least, for someone with her?

A. Yes, sir.

Q. You knew at that time, did you not, that you would be required to testify as to whether you knew whether the claimant had made any contract or agreement by which he or she had agreed to convey away that land; you know that a question of that kind would be put to you?

A. Yes, sir. Do you want to know what my idea was at that time?

Q. No, no; I just simply asked you whether you didn't know at that time that a question of that kind would be put to you? A. Yes, I knew that.

Q. And at that time you were prepared to testify that, so far as you knew, none of these parties had made any contract or agreement by which this land was to be conveyed?

(Testimony of Thomas B. Bryan.)

A. In selling, I don't consider it that.

Q. But you were prepared at that time to testify that none of these parties, so far as you knew, had made any contract or agreement by which they had bound themselves to convey this land?

A. I didn't know anything more about it than I have stated to you here.

Q. You don't understand the question. You came down here for the purpose of being a witness, did you not? A. Yes, sir, at that time.

Q. And you knew that if you were a witness you would be asked whether you had any knowledge of any contract or agreement that was made by either of these parties to the effect that they would convey the land?

A. Yes, I knew that.

Q. You knew that a question of that kind would be put to you? A. Yes, sir.

Q. And at that time you were prepared, were you not, to testify that you had no knowledge of any contract or agreement that had been made with any of these parties by which they had agreed to convey that land?

A. If they had made any agreement with those parties, of course, I knew nothing about it myself. All the agreement that was made was made between me and them. I don't know whether Mr. Cobban ever talked with them or not on the subject. All I know in regard to that I related to you—just what I related to you that

(Testimony of Thomas B. Bryan.)

I told Mr. Cobbans, I related that to them. As to Mr. Cobbans ever talking to them or having anything to do with them, I don't know anything about that, if he ever did, and I didn't at that time, neither.

Q. Had your daughter authorized you to make any agreement on her behalf or contract to the effect that she would convey this land after she got title to it?

A. As I told you, she wrote to me to know if I couldn't locate her a claim that she might take up; I told you that once before.

Q. That was the substance of that letter you had?

A. Yes, sir, that was the substance.

Q. And there was nothing else in it that you can now recall?

A. No, nothing to amount to anything; of course, there was some other things in the letter, but then it was just only family affairs.

Q. Now, Mr. Bryan, I wish I could make it clear to you the question that I wanted to address to you a moment ago. You came down here as a witness, and you knew that with reference to any claim upon which you were to be a witness, you would be inquired of as to whether you knew of the claimant having made any contract or agreement by which he had undertaken to convey that claim away after he had obtained the final receipt?

A. I know of none, only just as I told you, what I just stated; if they did ever—

(Testimony of Thomas B. Bryan.)

Q. You knew that such a question as that would be put to you?

A. Well, of course; I answered that.

Q. I want to know from you what answer you purposed making to that question when it was put to you; if you became a witness before the land office for any one of these three parties, what answer did you intend making to that question; that you did or that you did not know of any agreement having been made?

Mr. MAYNARD.—Objected to as immaterial and irrelevant and not legitimate cross-examination, because it calls simply for a supposititious matter as he did not appear as a witness.

Q. What answer were you going to make to that, you did or that you did not know of any agreement?

A. Of any agreement between these parties that we are talking of and Mr. Cobbans?

Q. To the effect that they were to convey the land to Mr. Cobban?

A. I told you once or twice that all the conveying there was said or done—

Q. I understand, Mr. Bryan, but—

Mr. MAYNARD.—Let him finish his answer. What is it, Mr. Bryan?

A. —was between me and Mr. Cobbans; that is all that I know; I don't know of anything Mr. Cobbans ever had to talk with them.

(Testimony of Thomas B. Bryan.)

Q. Mr. Bryan, I wish you would look at this paper which I now hand you, which is the final proof in cash entry No. 1156, of Matthew P. Dunham, and ask you if that is your signature to that paper, in which you appear as a witness? A. Yes, sir.

Q. You were a witness for Mr. Dunham, weren't you?

A. Yes, sir, I was.

Q. Among the questions propounded to you at that time was the following: "Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?" To which you answered, "No, sir, none whatever." A. Well, that is right.

Q. You answered that?

A. I didn't know if there was any then; I didn't know.

Q. That was the answer you made to that, was it not? A. Yes, sir.

Q. Did you know when you came here as a witness that you would be asked a similar question with reference to the claims of these parties for whom you came as a witness? A. Yes, sir.

Q. I want to ask you what answer you intended at that time to make to that question; did you intend to

(Testimony of Thomas B. Bryan.)

answer "No, sir," as you did in this, or did you intend to answer "Yes, sir"?

Mr. MAYNARD.—I interpose the same objection that I did when the same question was propounded a few moments ago.

A. I intended to answer "No."

Q. That would have been the truth, wouldn't it?

A. Yes, sir, that is what it would, because if they had agreed to convey to Mr. Cobbans or to any person else and to sell that directly or indirectly to Mr. Cobbans, I didn't know anything of it.

Q. Now, Mr. Bryan, what school was your daughter attending at that time?

A. There at Missoula. You mean that time I spoke of her going to school?

Q. Yes. A. There in Missoula.

Q. The High School there?

A. No, sir, she was going there to the Central School.

Q. Your sister, Lœilia T. Bryan, is a school teacher?

A. Yes, sir.

Q. How long has she been teaching school?

A. She has been teaching school about four years.

Q. Had been teaching school about two years at that time? A. Yes, sir.

Q. After speaking to your daughter about this matter, she said she would go and look at the land?

A. Yes, sir.

Q. What else did she say?

(Testimony of Thomas B. Bryan.)

A. I told her the conversation, as I stated once before, that I had with Mr. Cobbans.

Q. I didn't ask you what you said; what did she say?

A. She said she had made up her mind that she would go ahead and take the land up.

Q. Did you tell her what Mr. Cobban said, to the effect that after she had made final proof she would have to pay the price of the land back with interest or convey the land to him?

A. I told her—

Q. Answer my question, please. Did you tell your daughter what Mr. Cobban had said to the effect that whatever money he advanced she would be obliged to pay back to him with interest, or she could convey the land to him and there was a market for it there?

A. As to telling her—to just come right out and tell her—whether I gave it in those words or not—but the meaning that I gave her was I gave her the conversation which had extended between me and Mr. Cobbans, and then I told her that she would have to settle for the land; I told her that she would have to settle for the expenses of the land. I know I told her that.

Q. Now, do you remember telling her anything else?

A. Well, I think that was the conversation the substance of the conversation that was between us. It don't look reasonable that I told her anything else, that is all I know.

(Testimony of Thomas B. Bryan.)

Q. Did your wife make an entry under this Stone and Timber Act?

A. I was just excused from answering questions against my wife; I don't wish to testify against her.

Q. Where do you draw any distinction between your wife and your daughter?

A. Well, just because I would rather not testify against my wife in the case.

Q. Was your wife indicted? A. Yes, sir.

Q. What is her name? A. Harriet F. Bryan.

Q. You don't know of any contract, do you, that your wife made with anybody, or any agreement by which, prior to the time that she got her final receipt, she had agreed to sell her land to anybody?

A. I don't think that is a fair question after I have denied testifying against her.

The EXAMINER.—I understand that his wife is one of the parties who is indicted, so he can claim that privilege.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Bryan, how long did this conversation last that you had with Mr. Cobban at Mr. Griswold's house when you were first introduced to him?

A. Well, I couldn't say exactly how long to a minute.

Q. I don't want to a minute.

A. Well, then, we were there talking, it must have been, as well as I remember, as I stated—well, I don't

(Testimony of Thomas B. Bryan.)

know that I stated that, either, but any way it was just before noon, as well as I remember. We simply sit there on the rig of his wagon tongue, and we were sitting there perhaps half an hour and may be longer, I don't know.

Q. After leaving him that day after the close of this half hour conversation, when did you next see him and have another conversation with him, if you ever did, in regard to this matter?

A. Well, sir, I don't believe—my best knowledge now is that I never talked with Mr. Cobbans himself any more in regard to the matter because I went to work for the Northern Pacific Railroad and went away from Clearwater, and I don't think that I talked with him any more in the matter. I think that was the last time I see Mr. Cobbans for quite a while.

Q. And then I understand, Mr. Bryan, that after this one conversation that you now have fixed, you went to work and made these locations? A. Yes, sir.

Q. And then, after you had made these locations, you went to Missoula and saw your sister and your daughter?

A. No, not my sister.

Q. Your daughter? A. Yes, sir.

Q. You went to Missoula and saw your daughter and told her of this conversation that you had with Mr. Cobban, and what you had done?

Mr. BICKFORD.—Objected to; leading; also as irrelevent and immaterial, and not redirect.

(Testimony of Thomas B. Bryan.)

Q. Is that right?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. Is that true?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. Then, after this conversation with your daughter, how long after that time did she go with you to look over this land which you had selected for her?

A. I couldn't say exactly just how long it was, but it was within just a few days. I don't remember whether it was the next stage that we went up on—it might have been the second; it was right away afterwards, or in a few days afterwards.

Q. You went up on the next stage and you took her where? A. I taken her on this section six.

Q. That you had selected for her?

Mr. BICKFORD.—Objected to; leading, and also as repetition.

A. Yes, sir.

Q. What did you do then?

A. I went back to Missoula then, and went to work for the Northern Pacific Railway Company.

Q. Did you go back with her?

A. I think we went down on the same stage, as well as I remember.

Q. How long a time was your daughter up in that country?

(Testimony of Thomas B. Bryan.)

A. As well as I remember, we came in one night, and the next day we went up on the land, and then the stage went down that next—we were there two days at Clearwater, and then the third day we taken the stage for Missoula; I think that is right.

Q. How old did you say your daughter was?

A. She is twenty-three or twenty-four years old.

Q. And she was attending school?

A. Yes, sir, in Missoula.

Q. Had she ever worked out at all?

Mr. BICKFORD.—We object to that as not proper redirect.

A. She never worked out a great deal; she had worked out.

Q. What is it, Mr. Bryan?

A. She had worked away from home some, but not very much; she wasn't right strong and stout; she never was able to work much.

Q. And you said to Brother Walsh that after you had had this single half-hour conversation with Mr. Cobban that you communicated the result of that conversation to your daughter in Missoula; that is, you told her in Missoula what that conversation was, and the agreement that you had made with Mr. Cobban?

Mr. BICKFORD.—Objected to as leading.

Mr. WALSH.—Objected to, also, because the gentleman has not yet said that he made any agreement with Mr.

(Testimony of Thomas B. Bryan.)

Cobban, and he has not said that he told his daughter that he made any agreement with Mr. Cobban.

Mr. MAYNARD.—He did say so.

Mr. WALSH.—We won't dispute about that, Mr. Maynard.

Q. Is that not true?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. You say it is? A. Yes, sir, I told—

Q. I ask you—

Mr. WALSH.—Wait. We will insist that the gentleman be permitted to answer.

Mr. MAYNARD.—Certainly.

The EXAMINER.—Go ahead with your answer.

The WITNESS.—I did answer it.

Mr. WALSH.—He was talking; he was evidently preparing to say something.

Q. I ask you again just exactly what it was that you told your daughter at that time and place of the agreement that you had made with Mr. Cobban?

Mr. WALSH.—Objected to for the same reason.

Q. What she had to do, and what he was going to do for her?

Mr. WALSH.—Objected to for the same reason. The witness has not testified that he made any agreement with

(Testimony of Thomas B. Bryan.)

Mr. Cobban, nor has he testified that he told his daughter about any agreement that he made with Mr. Cobban.

A. It is the same question you asked just a while ago?

The EXAMINER.—Read the question. (Question read.)

A. I think I answered that same question in about this way twice now, that the conversation between those parties was the same that it was between me and Mr. Cobbans, I think I answered that that way, now, the third time; that is the best I can do. I can't remember every word that was said between us; I can't do that.

Q. Of course you can't.

A. But the substance of the whole thing is, I know I didn't misrepresent to them, and therefore—

Q. Who were present at that time?

A. At the time I did this?

Q. Yes.

A. There was no one, unless it was some of the family.

Q. I ask you specifically as to the conversation that you had with your daughter?

A. Well, I say, when I told her these facts, if there was anyone present when I reported to her it was some of the family; it was at my home there at Missoula.

Q. Certainly. Now, when you said that you told her these facts when you went down to see her, I ask you what those facts are again; just give in a few words what you told her.

A. The conversation that extended between me and Mr.

(Testimony of Thomas B. Bryan.)

Cobbans, you mean?

Q. Why, you understand me, Mr. Bryan?

A. I surely don't.

Q. I ask you to tell us now what you said to your daughter when you met her there at the house, after you had seen Mr. Cobban up at Mr. Griswold's?

A. Well, I will just commence the same old story, then, and I will go over it. I told her that I had seen Mr. Cobban and had talked with Mr. Cobban. I also told her we had made arrangements for her to go and take this land, that Mr. Cobbans would furnish them the money to prove up on the land, and that they could go ahead and take up their land in that way. I surely, undoubtedly, have repeated that now twice or three times.

Q. I don't understand you, that is all; we just want to understand each other, that is all. Now, Mr. Bryan, Mr. Cobban was to pay the purchase price of the land?

Mr. WALSH.—Objected to as leading, not redirect, and because the matter has been fully gone into on direct examination.

A. Now, the question?

Q. (Question read.)

A. As I have stated heretofore, Mr. Cobban was to let them have the money to prove up on this land.

Q. As a matter of fact, he did pay the money, did he not?

Mr. BICKFORD.—Objected to; leading.

(Testimony of Thomas B. Bryan.)

Mr. WALSH.—The witness says that he was here, but that he doesn't know anything at all about it, that he wasn't present at the time.

Q. How is that?

A. Some one paid the money; I suppose they did—

Mr. WALSH.—We move to strike out what the witness supposes.

Mr. MAYNARD.—Allright.

The WITNESS.—Well, they proved up on the land, anyway.

Q. Yes?

A. That is all I could say. As to seeing the money paid over, I didn't see that.

Q. That Mr. Cobban, then, you told your daughter, was to furnish the money to pay for the land, and she was to do what with the land?

Mr. WALSH.—Objected to, because it assumes a statement as having been made by the witnesss which he did not make, the statement of the witness being that Mr. Cobban was to furnish them, meaning the claimants, the money to prove up.

Q. I am talking about your daughter now. The conversation I am calling your attention specifically to is the conversation that you had with your daughter at this house when you went down to see her after you had this talk with Mr. Cobban?

A. That is the same question I answered a while ago, isn't it, if I understand it.

(Testimony of Thomas B. Bryan.)

Q. Let me understand it again, please?

A. Well, I don't think that is hardly—

The EXAMINER.—Answer the question.

The WITNESS.—Read the question. I will have to keep up some way or other.

Q. (Question read.)

A. Was to do what with the land?

Q. If she proved up, what was she to do?

A. As a matter of course, she was to dispose of the land in some way.

Q. Whom did you tell her she was to give or sell the land to?

Mr. BICKFORD.—Objected to as leading, and because he has not testified to whom she was to deed the land.

A. As I told you once before, Mr. Maynard, they had to settle with Mr. Cobbans for the land, to settle with Mr. Cobbans down there. He was to furnish the money to them, I told you as plain as I could, and they was to take up the land and prove up on it. Well, then, as I rehearsed I think I told her them very words, and that then she was to sell the land or settle with Mr. Cobbans for the money.

Q. Yes, and then how much was she herself to get out of it?

Mr. BICKFORD.—Objected to as not proper redirect, and also as being leading.

Q. What was she to get; what did you tell her she was to get out of it?

(Testimony of Thomas B. Bryan.)

A. I told her just what I told you that Mr. Cobbans said there.

Q. What was that?

A. They was to take the expenses out of one hundred and fifty dollars, and she could get the rest.

Recross-Examination.

(By Mr. WALSH.)

Q. You told her, also, of course, that if she didn't convey the land to Mr. Cobban, she would be obliged to pay him back the money with ten per cent interest on it?

A. I think I surely did. That was the understanding between me and Mr. Cobbans, and I surely didn't misrepresent it to her.

Q. Now, Mr. Bryan, you remember, don't you, the occasion when Mr. Lehman came down to Mr. Cobban's office and had some kind of a talk with him which resulted finally in his giving a deed of his land to Mr. Cobban?

A. You mean in regard—do I understand you there to say some words, some difference between them?

Q. No, I just simply asked you whether you remember that; were you there when that thing took place?

A. Yes, I remember that, Mr. Lehman making a deed there to Mr. Cobban.

Q. Now, there was some controversy between them about the matter, wasn't there?

A. Yes, there was.

Q. You remember, do you not, that they were endeavor-

(Testimony of Thomas B. Bryan.)

ing to settle the matter as to how much money Mr. Cobban had advanced for Mr. Lehman? A. Well, yes.

Q. Mr. Cobban wanted him to give him a mortgage on the land for the amount, didn't he?

A. Yes, I think Mr. Cobban asked him to give him a mortgage on the land; I am pretty sure he did.

Q. And Mr. Lehman didn't want to do that?

A. No, it seemed as he didn't.

Q. And the thing resulted finally in their agreeing on an amount which Mr. Cobban would pay him for the land, and the amount that had been advanced was taken away from that, and the balance was paid to him?

A. I think so; I think that is the way they settled.

Redirect Examination.

(By Mr. MAYNARD.)

Q. What do you say about this, Mr. Lehman; tell us about that now.

A. You want the whole thing?

Q. Yes, I want the whole thing.

A. Well, it seems that when those parties came up here and proved up on this land, and had went back to Missoula, that Mr. Lehman didn't want to settle up—

Mr. WALSH.—We object to this witness telling anything except what he knows of his own knowledge, what he heard anybody say about the matter, and not what it seems or what he understood about the matter The witness was only asked to state what he knows about this, and I asked him simply concerning any conversa-

(Testimony of Thomas B. Bryan.)

tion that was had between these parties in Mr. Cobban's office. Therefore anything else concerning the matter is not redirect examination.

The WITNESS.—There was a difference some way or another, that they didn't settle, and it seemed as Mr. Lehman, it seemed to be the trouble that he wanted more for the land than Mr. Cobbans could afford to give him, and that he didn't have the money to pay back—the four hundred dollars and expenses—he didn't have that to pay back, and it seemed as he didn't want to give a mortgage on the land, nor didn't want to sell it for what Mr. Cobban had offered him, or in fact the true thing of it was that he went right back on the conversation that I just told you had extended between me and Mr. Cobbans; he went right back on that, it seemed like—

Mr. WALSH.—We move to strike out the answer of the witness as not being any testimony in the case or responsive to any fact.

The WITNESS.— —and how come me to know anything about that, Mr. Cobbans asked me in regard to the matter.

Q. Yes, I understand now. This Edgar Lehman was one of the persons, and the same person that you named in connection with your sister and your daughter.

(Testimony of Thomas B. Bryan.)

Mr. BICKFORD.—We move to strike that out, because the question is leading and not proper redirect.

Q. And now you say that after he had proved up he went back on the agreement which you yourself had made with Mr. Cobban in behalf of himself and your sister and daughter?

Mr. WALSH.—Objected to as leading.

Q. Is that so?

A. Yes, it seems that he had.

Q. How much did he want over and above the hundred dollars and expenses that you had agreed with Mr. Cobban he was to receive?

Mr. WALSH.—We object to that, because the witness has not said that he made any agreement with Mr. Cobban on behalf of this man, that he was to receive anything.

A. As to that, how much he first wanted I couldn't tell you, because they had been together before the time when Mr. Cobban, rather, and Mr. Griswold, too, called on me. It seemed as Mr. Cobbans finally wanted to hold me responsible for the four hundred dollars that was out, or I imagined in my own estimation that he was going to do that, and therefore I went after Mr. Lehman myself; that is the facts of the whole matter.

Q. What do you mean by the four hundred dollars that was out?

A. That was the four hundred dollars that it taken to pay for this land, and the expenses, whatever Mr.

(Testimony of Thomas B. Bryan.)

Cobbans had charged up against him. I just went to him, and I told him, "Here, there was an understanding between us—"

Mr. WALSH.—We move to strike out this testimony as to what he said to Mr. Lehman—

Mr. MAYNARD.—Let him finish before you make your objection.

Mr. WALSH.— —and object to his telling anything he said to Mr. Lehman or what Mr. Lehman said to him, as hearsay, and as irrelevant and immaterial.

Q. Now, you went to Mr. Lehman and said what?

A. I said, "You know what I told you in regard to Mr. Cobbans leaving us have this money to prove up on this land, that you was to settle with him and what conditions you could settle with him on, and," I says, "I told you in plain words that if you couldn't do that you had better not file on the land, and you promised me that you would do it under those conditions," that I have already reported here, that he was to take up the land—and then, when Mr. Cobbans made the remark to me there at the time that he did in the first part of the testimony, he seemed to want to hold me responsible for the four hundred dollars and whatever the charges was for expenses, and after I had talked with Mr. Lehman a while, him and Mr. Griswold and Mr. Cobbans settled; I think, as well as I remember—I know that he got twenty-five dollars.

(Testimony of Thomas B. Bryan.)

Q. Twenty-five dollars more than you had agreed for him?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. So that he got how much, then?

A. Well, he realized one hundred and twenty-five dollars anyway that I know of, and I don't know how much more, but I know he realized that.

Q. You insisted, in other words, that he should not go back on you, but should carry out the agreement that you had made for him?

Mr. WALSH.—Objected to; leading.

Q. Is that so? A. Of course.

Recross-examination.

(By Mr. WALSH.)

Q. What did Mr. Cobban say to you when he came to you and talked to you about this Lehman proposition?

A. Well, it was just as I now stated; it seems—

Q. Not what it seems.

A. It was just this, he wanted his money back.

Q. What did Mr. Cobban say to you?

A. He said he would have to have his money back and ten per cent on it or the land, one. He wanted to buy the land; he wanted the land.

Q. Or he wanted his money back with ten per cent interest? A. Yes, sir.

(Testimony of Thomas B. Bryan.)

Q. You went and told Mr. Lehman that, didn't you?

A. I told Mr. Lehman, I said, "I feel under obligations for you to go ahead and do as the agreement was between me and you," which was the same that it was between me and Mr. Cobbans. I told him, "I want you to do what you agreed to do in this matter."

Q. And you wanted him to go up there and give a mortgage to Mr. Cobban for the land?

A. Any way; I don't know that I required any mortgage of him; I just told him I wanted to settle it with Mr. Cobbans; that was it. I didn't feel disposed to be out anything in the matter myself.

Q. Mr. Cobban came to you, however, insisting the Mr. Lehman should come up?

A. Of course he did.

Q. And give him a mortgage upon the land for the amount that he had put out, with interest on it?

A. I couldn't say that Mr. Cobbans asked me for him to give a mortgage; he just only required me to look after it, and that he should have his rights.

Q. Mr. Bryan, I asked you, did I not, a moment ago, what it was that Mr. Cobban wanted you to do?

A. Yes, sir.

Q. And Mr. Cobban said he wanted his money back out of the land? A. Yes, sir.

Q. And he wanted ten per cent interest on it?

A. Yes, sir.

(Testimony of Thomas B. Bryan.)

Q. And he wanted you to go and see Mr. Lehman and see that he did that? A. Yes, sir.

Q. And also Mr. Cobban told you that it was either that, or else he wanted to buy the land from him?

A. Yes, sir; he wanted his money back, that was just it, or the land or something to secure him.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Mr. Bryan, you were sworn before the grand jury, were you not?

A. Yes, sir, I guess so.

Q. You made an affidavit last spring when Mr. Zevely saw you in Missoula, did you not?

A. Yes, sir.

Q. Please look over that paper, and see if you have not read that over since you have been subpoenaed as a witness in this case, and if you have not stated to me, in the presence of others, that what was in that affidavit that you made before Mr. Zevely was the truth, the whole truth and nothing but the truth, or the substance of it?

Mr. BICKFORD.—We object, if your Honor please, because the question is leading; next, because it is not proper redirect examination; third, because it is irrelevant, incompetent and immaterial, and is not proving or tending to prove any issue in this case.

A. Now, you mean this paper?

(Testimony of Thomas B. Bryan.)

Q. Yes.

A. I have done the best I could in giving you the same testimony. The questions has not been asked just the same that they were in the grand jury room, but the meaning thereof, as near as I could, I have answered the best I know how the same. I have nothing to go back on whatever on this that I swore to before the grand jury, nor what I read.

Q. This is the affidavit that I ask you about; see if there is anything in the affidavit that you now desire to change.

Mr. BICKFORD.—We move to strike out the answer of the witness and everything that has been said concerning the testimony before the grand jury, for the reason that the same is incompetent and immaterial and is not responsive to any issue in this case; further, because it is contrary to the policy of the law to disclose the proceedings of a grand jury or what might transpire in the grand jury room, because the presumption is—

Mr. MAYNARD.—Just allow me one moment. I didn't ask him for the testimony that he gave before the grand jury.

Mr. BICKFORD.—I will answer you as soon as I finish my objection. Because the proceedings in the grand jury room are supposed to remain inviolate, and because the examination in the grand jury room of the

(Testimony of Thomas B. Bryan.)

United States grand jury is not to be made public property by a subsequent examination before a different tribunal, or the same tribunal and because it is a breach of professional faith to disclose the doings in the grand jury room; and for the further reason that in the proceedings in the grand jury room the witness is interrogated only concerning one side of the case, and the case is presented only to the grand jury by the witnesses on behalf of the people, and the people only are represented by counsel; for these reasons we ask that it all be striken out.

Mr. MAYNARD.—I desire to say that the Government has asked the witness no question as to the testimony which he gave before the grand jury; what I did ask the witness is if that affidavit has not been examined by him since he has been subpoenaed here as a witness in this proceeding, which he made last spring in Missoula, and if he has not stated to me and others that it contains the truth, the whole truth and nothing but the truth, and that he would be prepared to give the same answers to the same questions, if they were propounded to him, except that he did not care to testify anything incriminating his wife.

Mr. BICKFORD.—We object to the statement of counsel on the ground that it is an evident effort on the part of counsel representing the Government to impeach the testimony of his own witness, and we move

(Testimony of Thomas B. Bryan.)

that the statement of counsel be stricken from the record.

A. As to this affidavit, Mr. Maynard, we have went through it once, and I corrected it in two or three different places. The rest of it I testified before, and I will do it now. If you will ask the questions in the same plight and manner, to the best of my knowledge that it is true; what I have left here for you to take to be the truth and the whole truth; it is a fact; we don't deny that, never in the world.

Q. Can you point out there, then, what corrections you have made in it? A. Yes, sir.

Q. Very well; point them out, then.

Mr. BICKFORD.—We object to the pointing out of the correction of words in a paper which was taken in an extrajudicial proceeding when there was no persons present to cross-examine the witness, and when the testimony of the witness was apparently reduced to writing at a time when he was not represented by counsel and when no question was before any court of competent jurisdiction for determination, and for the reason that the same is irrelevant and immaterial; for the further reason that the statement which the witness is required to correct has not been presented as a part of the evidence in this case, and is apparently a part of a private memorandum held by counsel for his own guidance in the conduct of the case, and which has not heretofore been submitted to counsel upon the opposite

(Testimony of Thomas B. Bryan.)

side for examination; for the reason that it savors of a star chamber proceeding, so called, and because it is irrelevant and immaterial, and evidently presented for the purpose of entrapping the Government's own witness in statements which have been heretofore made, where he has had no opportunity of explaining himself or his meaning.

Mr. MAYNARD.—Tennyson's "Brook!"

Mr. BICKFORD.—Yes, it goes on forever.

The EXAMINER.—Don't make any comments. Let the witness answer the question.

Q. Will you please point out—

The EXAMINER.—There is an objection in there; we'll have the question read.

Q. (Question read.)

A. The first question is: "Your wife lives in Clearwater," I rubbed that out. The second one: "Yes, there was an understanding, of course, that he was to pay the expenses; he then was to give me six hundred dollars for the four claims outside of all expenses." I rubbed that out. Third, "I made one trip there with Mr. Dean." That was a mistake. That was all the corrections that I made to that statement.

Mr. MAYNARD.—You may look at that statement, if you desire, Brother Walsh.

Mr. WALSH.—I don't care to see it.

(Testimony of Thomas B. Bryan.)

Mr. MAYNARD.—I offer in evidence the paper that the witness has just examined.

Mr. WALSH.—We object, on the ground that it is not evidence in this case upon any possible or conceivable theory of the rules of evidence; it is immaterial, irrelevant, and incompetent; it is mere hearsay; it is a declaration of a witness made out of court when the defendant was not present or represented, and when he had no opportunity to cross-examine the witness, and that it is manifestly introduced into this record for some purpose other than for the purpose of being used as evidence in this case.

Mr. MAYNARD.—I tender the paper to counsel for examination, and now advise them that they have a full and fair opportunity to cross-examine the witness on this paper if they desire.

(Said paper is as follows, to wit:)

Exhibit "G."

Mr. THOMAS B. BRYAN, called, sworn, testifies as follows:

Q. What is your postoffice address?

A. Clearwater, Montana.

Q. Mr. Bryan, have you yourself made entry to land in Montana under what is known as the Timber and Stone Act?

A. I did four years ago, but not in this case.

Q. Do you know any persons who have?

A. I think I do, yes, sir.

(Testimony of Thomas B. Bryan.)

Q. Who are they?

A. My wife, Harriet Bryan, took up a claim, the south half of the southeast quarter of the south half of the southwest quarter of section twenty-six, township fifteen, range fifteen.

Q. When did she take it up?

A. August 4th, 1899.

Q. Was it in the summer or fall of 1899?

A. It will be two years ago in August.

Q. Your wife lives in Clearwater. Did anybody go to see her about taking up a claim?

A. She seen Mr. Cobban and talked with Mr. Griswold; there was also three more taken up by L. T. Bryan, Edgar Lehman and Belle Bryan.

Q. Did you have a conversation with Mr. Cobban about these four entries?

A. I had a talk with him, yes, sir; it was just this way; after the filing of this timber he was to support them in proving up on it; they was to file on the land and he was to furnish the means to prove up on the timber claims, which I suppose he did.

Q. Did he for your wife?

A. Yes, sir, he paid her money from proving up.

Q. Did your wife get a deed for it?

A. It seems me she got a patent [struck out in pencil and corrected to "final receipt"] and she turned it over to Mr. Cobban, and she gave a deed to Mr. Cobban, for I didn't have any interest in it. What is true with my wife

(Testimony of Thomas B. Bryan.)

is also true with all the others. I never looked after them any further than I helped them to locate the land as is required, but after that I don't know what was done.

Q. Did you go on to the land yourself?

A. I made one trip there with Mr. Dean [struck out in pencil and corrected to "Griswold"]. I went to Helena to make final proof, but I didn't see any money paid to them.

Q. In Cobban's conversation with you, did he say what he would pay them?

A. Yes, sir; there was an understanding, of course, that he would pay the expenses; he then was to give them six hundred dollars for the four claims outside of all expenses. I asked him what he would give for the four claims and him to pay the expenses, and he said he would give one hundred dollars apiece and pay all expenses; and I then said, "You will give six hundred dollars if I pay all the expenses," and he said, "Yes."

Q. You didn't have to pay for the land?

A. No; I supposed he was to pay for the land; that was my understanding at that time, that we were to get one hundred dollars for the land and fifty dollars for expenses, and I understand that was carried out that way. My wife got one hundred and fifty dollars less the expenses of making final proof; that was the understanding. She realized from it one hundred dollars and Mr. Cobban was to furnish the money.

Q. Who paid for the land at the Helena land office?

A. There was a man by the name of J. B. Catlin there

(Testimony of Thomas B. Bryan.)

when we was there when we made the final proof; he went to the land office with us.

Q. Did they get any papers there or any receipt when the money was paid?

A. I couldn't say if they ever got any or not; I didn't notice.

Q. Do you know anything about who paid for the advertising of this land?

A. She paid for it; that had to come out of the two hundred dollars.

Q. What was your occupation at the time?

A. I was a laboring man at that time, working for the Northern Pacific as bridge carpenter. At the present time I am running a hotel at Clearwater.

THOMAS B. BRYAN.

April 23d, 1901.

Thomas B. Bryan was sworn by me before this statement was made, and the erasures and interpolations were made before he signed, and the same was signed by him in my presence.

J. W. ZEVELY,
Special Inspector.

(By Mr. MAYNARD.)

Q. Now, one more question. In any of the conversations that you have had with me from the beginning of this case or with Mr. Zevely, or any other person representing the Government, and in any matter at any time before this day at any place, or before any tribunal, or

(Testimony of Thomas B. Bryan.)

anywhere, have you ever said or intimated that there was any proposition made by Mr. Cobban that under any circumstances the land was to be—in case it was not conveyed to him, that he was to get ten per cent interest and the money back?

Mr. WALSH.—Objected to as immaterial whether he did or did not make any such statement to the counsel.

A. I don't think, Mr. Maynard, I ever did to you or Mr. Zevely. Me and Mr. Griswold has talked that before now time and again. I said nothing about it at all no more than I could possibly help, and you know yourself that I have talked very little with you in regard to the matter; I haven't talked with any one. I think, though, that me and Mr. Griswold have talked that matter heretofore.

Q. You think you have? A. I know we have.

Q. Whereabouts did that conversation take place?

A. Well, we were talking about it over in Butte this last time, I know of then, and I think we were when we were here once before, but I know we was over here in Butte.

Q. Since you have been subpoenaed here in the last few days?

A. Yes, while we was in Butte, I think me and Mr. Griswold was talking, and the conversation then run from beginning to end from half a night or such a matter.

Q. And I understand you have no recollection, or clear recollection, of any other time and place except when, a

(Testimony of Thomas B. Bryan.)

few days ago, you were present as a witness, subpoenaed in Butte?

A. I said I thought Mr. Griswold and me talked about it before when we were here in Helena before the grand jury; I know me and him has talked about the matter several different times.

Q. What did you say to him?

Mr. BICKFORD.—We object to conversations between the witness and Mr. Griswold as hearsay, and as irrelevant and immaterial.

A. You have got my testimony here, and the conversation run right along with that all the time; I think he will tell you the very same thing, that it runs just about that way, all the conversation that I have had with Mr. Griswould.

Recross-Examination.

(By Mr. WALSH.)

Q. You think Mr. Griswold will say the same thing?

A. I think he will say the conversation between me and him will run just about as I have stated; I think he will.

By Mr. MAYNARD.—You mean by that, about what you have testified here?

Mr. WALSH.—The witness is with me.

The EXAMINER.—Mr. Walsh has the witness.

(By Mr. WALSH.)

(Testimony of Thomas B. Bryan.)

Q. You say you think you talked with Mr. Griswold when you were here once before about this same matter of Mr. Cobban saying to you that he would want his money back with ten per cent interest in case the land wasn't conveyed?

A. The conversation has been up between me and Mr. Griswold ever since on Sunday evening when they first called me at Missoula, time and again every week, pretty near every two or three weeks ever since.

Q. But Mr. Maynard asked you whether you talked over with Mr. Griswold that feature of the case, namely, that Mr. Cobban had said that he would want to get his money back with ten per cent interest, provided he didn't buy the land?

A. Well, my best judgment is that we talked that over here, me and him did, when we were here in Helena before the grand jury, and if we didn't, Mr. Griswold knows as well as Mr. Cobban, and they are both in the house, if this conversation was right of mine at the time that Mr. Cobban wanted me to round up Mr. Lehman; they both know this to be a fact and they are here to testify themselves.

Q. If you will confine yourself now for a minute to the question that I asked you, we will get on, and I will drop you right away. I want to know from you this—you told Mr. Maynard that you had talked over with Mr. Griswold that feature of this case, namely, that Mr. Cobban had said to you that he would want to get back his money with

(Testimony of Thomas B. Bryan.)

ten per cent interest in case he didn't buy the land after the final proof had been made. I want to know from you if you did, as a matter of fact, ever talk that feature of the case over with Mr. Griswold?

A. Did I ever do it?

Q. Yes. A. Yes, sir.

Q. I want to know what Mr. Griswold said about that.

A. I don't remember what Mr. Griswold did say about it; I don't remember now just what he did have to say about it.

Q. Didn't he say that he understood that, that that was the way he understood the proposition?

A. Well, he didn't object to it. Mr. Jemison was talking about the very same thing, and Mr. Griswold said nothing as I remember about it to the contrary or in favor of it, or nothing about it.

Redirect Examination.

(By Mr. MAYNARD.)

Q. Now, then, this conversation took place at Missoula, did it not? A. What?

Q. In regard to this, Mr. Cobban wanting his money back?

A. No, I didn't say, mind you, that that part of the conversation was; I said me and Mr. Griswold had talked this matter over and over ever since that time. I didn't say that that part of the conversation between me and Mr. Griswold ever came up there, for I don't think it did

(Testimony of Thomas B. Bryan.)

right there that first time I ever went in there; I don't know that it did, nor I don't know that it didn't.

Q. But didn't you state a moment ago that it was brought up in connection with Mr. Lehman?

A. I say yes; I say he knows that it was by Mr. Cobban rallying on me there, because he was right along there, and was down at Missoula and working on him at that time, and he knowed the nature of the case as well as I did in regard to that.

Q. The Lehman case?

A. Well, as a matter of course he knowed it when he went and called me off my work and tried to settle this Lehman matter at Missoula.

Q. And that was the case when Cobban had advanced the money and paid for the land for Lehman, and Lehman refused to carry out the agreement that you had made with Mr. Cobban, to convey the land for one hundred dollars?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. And then it was that matter that finally resulted in Mr. Cobban paying twenty-five dollars more?

Mr. BICKFORD.—The same objection; leading.

Q. And Mr. Cobban then said that Lehman ought to deed to him or he ought to pay him back with ten per cent interest, isn't that so?

Mr. WALSH.—The same objection.

A. Of course, that was the substance of the whole

(Testimony of Thomas B. Bryan.)

thing, that Mr. Cobban was holding me responsible for it; I have stated that now three different times.

Recross-examination.

(By Mr. WALSH.)

Q. Was that the only time or place that you ever talked this over with Mr. Griswold, in which this matter of Mr. Cobban getting back his money with ten per cent interest was mentioned?

A. Well, I couldn't answer that question; as I stated before, we have talked the matter over so much that I couldn't tell right just where I mentioned that one question to Mr. Griswold, nor no part of the conversation.

Q. Can you say it was mentioned at some other time or place than at Missoula in connection with the Lehman matter?

A. It was here in Butte not a great while ago that we were talking about it.

Q. Was it mentioned here when you were here in Helena before?

A. My recollection is that it was, between me and him.

THOS. B. BRYAN,

Subscribed and sworn to before me this 18th day of December, 1901.

HENRY N. BLAKE,
Examiner in Chancery.

Testimony of Thomas B. Bryan.)

Whereupon further hearing was adjourned until Tuesday, Dec. 17th, 1901, at 10 A. M.

THOMAS B. BRYAN, by consent of parties, recalled as a witness for defendant.

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Bryan, I would like to ask you whether, on the evening subsequent to giving your testimony here the other day, you had any conversation at the dinner table with Mr. Griswold touching the matter of your testimony and that of Mr. Jemison?

A. There was the subject up to that effect, yes, sir?

Q. I would like to ask you whether, in the course of that conversation, Mr. Griswold, referring to the testimony given by yourself and Mr. Jemison, did not say to you in substance that someone would get himself into state's prison yet concerning the testimony he had given in this case?

Mr. MAYNARD.—Objected to as leading, and as immaterial and irrelevant and incompetent as a witness for the defense.

A. As to the remark that Mr. Griswold made, he made that remark there; he said that someone would be likely to go to Deer Lodge prison before this was over; that is my recollection about it.

Q. I will ask you whether in the same connection

(Testimony of Thomas B. Bryan.)

Mr. Griswold did not state that he had committed perjury a number of times in this case, and that he would do it again, if necessary, to win the case?

A. I don't know that Mr. Griswold made that remark right there and then in that subject; I can't say that he did.

Q. When was it that he made it?

Mr. MAYNARD.—Objected to as leading, because he don't say that he did say it.

A. I have heard Mr. Griswold make such a remark as that. I think, as well as I remember—well, I am sure it was over at Butte, while we were over there.

Q. At Butte, while you were attending the hearing of this case?

A. Yes, sir, before it was moved from there here.

Cross-Examination.

(By Mr. MAYNARD.)

Q. What do you say that you heard Mr. Griswold say?

A. He said that there was someone would go, as I stated to you, that someone would go to the Deer Lodge penitentiary, there at the table that night; that is my recollection.

Q. At the table?

A. Yes, sir, there at the supper table that night.

Q. That was, if there was any perjury committed in this case?

(Testimony of Thomas B. Bryan.)

A. Yes, sir, he said there was likely to.

Q. They were likely to go to the penitentiary?

A. Yes, sir.

Q. Now, what is the next thing you heard him say?

A. Why, me and Mr. Griswold has not talked very much since I spoke of there—not a great deal; I don't know that I have heard Mr. Griswold say anything since we were at the supper table that I have just spoken of.

Q. Did you ever hear him in your life, Mr. Bryan, since you were called as a witness before Mr. Zevely and gave your affidavit before Mr. Zevely, and when you came up here with him to testify before the grand jury, and when you have been with him since, did he ever at any time say anything to you but what he wanted the truth, the whole truth and nothing but the truth told by you in this matter?

Mr. WALSH.—Objected to as not proper cross-examination touching the conversation about which the witness was asked.

Q. Is that so?

A. Mr. Griswold never has insisted on me telling anything but the truth.

Q. And isn't it true that in any conversation that he has had with you at any place, that he has only insisted that if you did testify, you should tell the truth?

Mr. WALSH.—Objected to as not proper cross-examination touching the matter concerning which the witness has been inquired of.

(Testimony of Thomas B. Bryan.)

A. Yes, sir.

Q. Now, what do you say that Mr. Griswold said about his committing perjury?

A. I am sure that I heard him make that remark over in Butte, that he had done it, and he would do it again to win the case; that is just the straight of it; that is the remark that he made over in Butte in my presence.

Q. That he had done it?

A. That he had perjured himself once and he would do it—

Q. (Interrupting.) Once, what do you mean by that?

Mr. WALSH.—One moment; let him answer the question.

A. (Continued.) —again or win the case. That is the substance of that question. All I heard him say.

Q. Where had he committed perjury?

A. Well, I can't tell you; he didn't say. He just said that he had once and he would do it again.

Q. You heard him testify here yesterday, did you not? A. Well, very little.

Q. Wasn't you here in this room?

A. I was reading my own testimony over all the time Mr. Griswold was on the stand, and I paid no attention to what he was saying yesterday.

Q. Didn't you hear the question put to him as to whether or not he had committed perjury in answering the questions at the time of making the final proofs?

(Testimony of Thomas B. Bryan.)

A. As I told you, Mr. Maynard, I was busy all the time yesterday right there that Mr. Griswold was on the stand, and I didn't hear but very little of Mr. Griswold's testimony yesterday, because I was busy reading my own there.

Q. So you didn't hear what he swore to?

A. I couldn't tell you what Mr. Griswold swore to yesterday.

Q. So you don't know what he referred to in this conversation?

A. No, sir; that was just what he said.

Q. And you don't know but what he stated to you then, or meant in his statement to you in that conversation, that it was necessary to commit perjury in making out these applications under the Stone and Timber Act under the contract that he had made with Mr. Cobban?

A. Mr. Griswold's testimony yesterday I don't know anything of, and I stated to you just all I heard him say in regard to that.

Q. And you don't know what he referred to?

A. No, sir, I don't know anything about that; that is just what he said; I have told you as near as I can what I heard him say.

Q. Isn't this the case, Mr. Bryan, that Mr. Griswold in that conversation you referred to said that he had committed perjury in the matter of these applications as a witness and so on, and that the only way that he could square himself was by now telling the truth?

(Testimony of Thomas B. Bryan.)

A. I don't remember him going over it in that light; I gave you the best knowledge that I had of his conversation at the time, and that is all I know about it. I don't remember him saying anything about witnesses or bringing up any witnesses or anything of that sort.

Q. But didn't he say that that I have just put to you?

A I don't remember.

Q. You won't say but what he did say that?

A. I have no recollection at all of his having that conversation at all.

Q. That he had committed perjury in the past in this matter, and that now the only thing he could do to square himself was to tell the truth in the matter, the whole truth. What do you say?

A. I don't remember hearing Mr. Griswold go over that.

Q. But at all the time you swore that he was advising you to tell the truth?

Mr. WALSH.—Objected to as not proper cross-examination.

A. Yes, sir.

Q. Who was present when this conversation took place? A. When he had this?

Q. That you have testified to Mr. Walsh there?

A. I couldn't say just exactly; me and him was there together; I couldn't say who was present.

Q. Was there anybody else present?

A. It seems to me that there was.

(Testimony of Thomas B. Bryan.)

Q. Who?

A. Well, I wouldn't be sure that there was any person present, nor I wouldn't be sure that there was not. It was over at Butte there, while we were in our rooms together.

Q. Whereabouts?

A. I wouldn't state any identical one that was there and heard him say that.

Q. You don't know whether there was anybody else present or not?

A. No, I don't remember now for sure.

Q. Since you came to Butte, subpoenaed as Government witness, you have been frequently in conversation with Mr. Cobban, have you not?

A. I have been in conversation with Mr. Cobban some, yes, sir.

Q. How many times?

A. I have been in conversation with Mr. Cobban, I believe, twice since I came to Helena, and once that I know of in Butte.

Q. Whereabouts did that conversation take place?

A. I was talking with Mr. Cobban yesterday evening up at the Helena Hotel, I think.

Q. About this matter? A. No, sir.

Q. Was your attention called to this matter?

A. No, sir.

Q. When was your attention first called to this question that Mr. Walsh first put to you here?

(Testimony of Thomas B. Bryan.)

A. Well, I don't know that I have had any conversation with any one, only just right now.

Q. To whom did you tell it?

A. I just now told it to you.

Q. To whom did you tell it before you went on the stand this morning?

A. Me and Mr. Muchmore and Mr. Jemison and Mr. Griswold and all of us have been talking this matter over several days, and they are all the ones that I have talked with and through. The first time I knew anything about this thing ever coming up was yesterday; Mr. Griswold himself spoke of it yesterday evening, was the first I knew anything about it.

Q. What did he speak about yesterday evening?

A. He was talking in regard to that matter, and asked me about the subject that was at the table, and he said he or Mr. Hafway, one of the two, said that Mr. Cobban overheard it at the supper table that night. That was the first I knowed about this matter and the first I paid any attention to it. About all that I knowed anything about it, I came out of the courtroom down there and they all spoke about it before I knew anything about it.

Q. About what?

A. About this subject that was at the supper table that night, and the supposition with them was that Mr. Cobban overheard it himself. That was the first I heard anything about it.

(Testimony of Thomas B. Bryan.)

Q. Where do you say this was called to your attention first?

A. Right down there on the street yesterday evening; as well as I remember it was before we went to our room.

Q. Now, just state what you heard there?

A. Nothing more than Mr. Griswold himself was speaking of it.

Q. What did he say?

A. He said that Mr. Cobban had got hold of it or overheard it himself, the conversation.

Q. Had overheard the conversation which took place where?

A. At the supper table; that was the subject; that night up there at the hotel.

Q. In this town? A. Yes, sir, in this town.

Q. And when, what day?

A. It seems to me like it was the 16th, the night—just a few nights ago. I won't be positive just exactly what night it was, because my mind nor attention was never brought to it any more till yesterday evening, and they were talking the subject over down there among all hands of them, and was at it last night, too, right in our rooms, and therefore I couldn't just say what night it was, because I never heard anything about it till yesterday evening, and never thought anything about it.

Q. Now, you may be clear and I may be dull, but I

(Testimony of Thomas B. Bryan.)

don't understand you at all. You say that this conversation took place in this town?

A. Yes, sir; yesterday evening; that we are talking of now, in regard to what was said at the supper table by Mr. Griswold, stating that some one, if they didn't watch out or wasn't careful, that some one would go to the state prison at Deer Lodge. Now, that is the conversation you are talking about, isn't it?

Q. No, it is not at all; we passed that long ago.

A. Then what?

Q. We passed that long ago; I dropped that ten minutes ago.

A. Well, I supposed you were on that subject yet.

Mr. WALSH.—We all supposed that was what you were talking about.

Q. I am asking you in regard to the other part of the conversation that you claim you had with Mr. Griswold, in which he said he had committed perjury; that is the one I am calling your attention to.

A. Well, you want to know who was the first one I heard speak of that outside of myself?

Q. Yes.

A. Well, sir, Mr. Muchmore, that is who; he was the first man that said anything to me in regard to that, and him and me talked the matter over after Mr. Griswold—that I had heard him say this. Mr. Muchmore asked me if I heard him say it.

Q. Now, I call your attention to that conversation, and ask you where that took place?

(Testimony of Thomas B. Bryan.)

A. As well as I remember, that taken place in Butte.

Q. Whereabouts in Butte?

A. Well, I couldn't tell you whether it was in the room, or whether it was going to the courtroom or back, but anyway, I heard Mr. Griswold state it.

Q. You don't know who was present, or when it was?

A. No, I don't. I know that it was in Butte, while we were there; I know that.

Q. Now, isn't it true Mr. Bryan, that all the time, while he was urging you to tell the truth in any matter that you were called upon to testify about in this case, that he himself said that he was going to swear himself as a witness in the case by telling the truth, for the perjury that he had committed before in making these applications?

A. Well, I don't know that I ever heard Mr. Griswold say that word for word; I couldn't tell you—

Q. Wasn't that the substance of it?

A. I couldn't tell you that I ever heard Mr. Griswold say that word for word; no, but I have heard him make similar remarks, and then turn right around and afterwards, or even then—I have heard him make that remark several times, and then he would turn around and make this other remark.

Q. But you have heard him in substance make the remark that I have just asked you about?

A. Something similar to that; yes, sir.

(Testimony of Thomas B. Bryan.)

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Bryan, when was this that Mr. Muchmore asked you about this conversation had over in Butte?

A. I couldn't say whether it was before we left Butte or whether it was on Sunday, or after we got here; I couldn't say exactly.

Q. What did Mr. Muchmore say about it?

A. He just only asked me—he said: "Did you hear Mr. Griswold make the remark," which I said a while ago, and I told him yes; I heard him make that remark.

Q. Did Mr. Muchmore say anything further?

A. Well, that was about all the substance of it.

Q. Did Mr. Muchmore say that he had heard him make the remark?

A. Yes, he said—he told me he had heard him make the remark, Mr. Muchmore did, and asked me if I heard it.

Recross-examination.

(By Mr. MAYNARD.)

Q. Just one question that I neglected to ask you. You stated once before that when you were subpoenaed as a Government witness, and were in attendance in obedience to the Government subpoena, that after dark and in the night-time you were up in Mr. Bickford's office with other Government witnesses, when Mr. Walsh and Mr. Bickford were there?

A. Why, I don't think I ever stated that.

(Testimony of Thomas B. Bryan.)

Q. Wasn't you there?

A. After dark?

Q. Yes.

A. I don't think it. No, sir.

Q. Wasn't you up there?

A. I have been in Mr. Bickford's office, but I never was there in the night.

Q. Wasn't you there in Mr. Bickford's office during the time that you were in Butte in attendance there under the Government's subpoena?

A. Yes, sir; I was in Mr. Bickford's office.

Q. What time in the day?

A. I couldn't say exactly; it was in the morning, after I had eat my breakfast some time.

Q. Wasn't you there at seven o'clock in the evening?

A. At Mr. Bickford's office?

Q. Yes.

A. Well, if I was, I have no recollection of it.

Q. Will you say you weren't there with one or two other Government witnesses?

A. Yes, sir; I will say that I wasn't there with one or two others, because I know I wasn't; and I will say that I wasn't there at seven o'clock in the evening; that I have no recollection of it at all whatever. I don't think I ever was in Mr. Bickford's office but once.

Q. When was that?

A. That was while I was in Butte.

Q. How long were you there?

A. I wasn't in there but a few minutes.

(Testimony of Thomas B. Bryan.)

Q. How did you come to go there?

A. I went in there—let's see; I don't know but what I went up there with Mr. Cobban; I don't know for certain; I don't know but what it was him that I went up there with. If it was not, I went up there by myself; I won't be sure that I went with Mr. Cobban.

Q. Didn't you drink with Mr. Cobban while you were there in Butte?

A. I never drank a drink with Mr. Cobban in my life.

Q. Didn't you meet him in a saloon in Butte?

A. Yes, sir; I see Mr. Cobban there in a hall one time.

Q. In a saloon? A. Well, yes.

Q. Didn't you meet him there according to agreement? A. No, sir.

Q. Didn't you know he was to be there?

A. No, sir; I didn't know Mr. Cobban was in that saloon till I met Mr. Jemison, and he told me that Mr. Cobban was sitting back in the office there, or in the saloon there.

Q. Didn't you go down and sit at the table with him at that saloon?

A. Yes, I sit down there and talked with Mr. Cobban a while.

Q. Didn't you meet him after that time?

A. At that time that I were in Butte?

Q. Yes. A. I don't remember.

Q. Didn't you make an appointment to meet him

(Testimony of Thomas B. Bryan.)

there and fail of the appointment, and didn't you tell me so?

A. No, sir; because at the time I see Mr. Cobban there, I walked right out; I don't think that I was in that saloon there where Mr. Cobban was but a few minutes, I don't know how long, and I got right up and walked out and around, and taken a street-car and struck the railroad for Missoula; that is straight goods.

Q. How long was you in that saloon with him?

A. I told you I didn't know exactly how long; perhaps it might have been half an hour that I sat in there.

Q. You met him there at the Helena Hotel last night, did you not?

A. I see Mr. Cobban there at the Helena.

Q. You met him there according to agreement, did you not? A. No, sir.

Q. Didn't you make an appointment to meet him there? A. No, sir.

Q. How did you happen to be there?

A. I went to the Helena Hotel because I wanted to.

Q. Why did you go there?

A. Well, I went there, just went up there to sit down awhile, and when I went in there Mr. Cobban was there.

Q. Did you know that Mr. Cobban was staying there?

A. Yes, sir.

Q. Were you staying there?

A. I have been up there; I haven't eat there, nor I haven't slept there, but I have been there quite often.

Q. Why did you go there?

(Testimony of Thomas B. Bryan.)

A. Well, just as I told you, because I felt like going up there and sitting down.

Q. Didn't you feel like going there because you wanted to see Mr. Cobban? A. No, sir.

Q. Didn't you go there for the purpose of meeting Mr. Cobban?

A. No, sir; I didn't. I had no understanding to meet Mr. Cobban there; none at all.

Q. Did you expect to meet him there?

A. No, sir; I didn't expect anything about it, any more than I did you. Didn't I see you there?

Q. Yes, I am stopping there.

A. Well, I see you go through the room.

Q. Had you been in the Helena Hotel before since you have been in the city? A. Yes, sir.

Q. How many times? A. Three or four times.

Q. What for?

A. I would just go in there and pick up papers and read.

Q. Where are there any papers in the Helena for you to pick up and read?

A. I got papers right on the counter there.

Q. Did you buy any?

A. I have bought papers there.

Q. Did you buy any this time?

A. I don't think I bought any papers this time.

Q. Are there any papers there that are lying there to be read by anybody?

(Testimony of Thomas B. Bryan.)

A. I picked up a paper there, yes, sir; I picked up papers right there and read them.

Q. Are there any papers there for the public to read?

A. Well, I don't know whether they are kept for the public or not, but I picked up papers right there and read them, and I done it more than once.

Q. And you were there at the hotel for the purpose of reading the papers, do I understand you?

A. I went there, yes, sir, more for that than anything else; I don't eat, or board, or sleep there; I had no other business there.

Q. And how many times during the visits that you have made to the Helena Hotel have you seen Mr. Cobban, who is stopping there?

A. I think I see Mr. Cobban there once; I don't know but once. I may have seen him other times passing through the house.

Q. Did you not, each time that you went to the Helena Hotel, go there to see Mr. Cobban, and didn't he ask you to go up there?

A. No, sir; he did not.

Q. Nor Mr. Bickford?

A. No, sir; Mr. Bickford didn't ask me to go there, either.

Redirect Examination.

(By Mr. WALSH.)

Q. Do you want to say something, Mr. Bryan?

A. Yes, sir; I would like to ask Mr. Maynard a question.

(Testimony of Thomas B. Bryan.)

Q. He is not on the witness stand; you cannot ask him any questions, but if you want to make any statement about your testimony you have a right to.

A. None at all; I just wanted a little—

Q. Mr. Bryan, I want to ask you whom you met at Mr. Bickford's office?

A. I met no one there, as I remember, but you.

Q. I was there at the time, was I?

A. I think you were.

Q. Mr. Bickford or myself asked you what facts you knew about this case, did we not?

Mr. MAYNARD.—Objected to as not redirect, and as leading his own witness.

A. Yes, sir; you asked me something in regard to the matter.

Q. And you answered, and gave us the information we were asking for? A. Yes, sir.

Q. What else transpired there?

A. I don't remember anything else.

Q. That was the substance of it, was it?

A. Yes, sir.

Q. You evidently were brought up there for the purpose of being asked some questions about the matter, and you were asked the questions, and you answered them, and when that was done you left, didn't you?

A. Yes, sir.

Q. That was the entire matter, wasn't it?

A. That is so.

(Testimony of Thomas B. Bryan.)

The EXAMIER.—Let a stipulation be entered that it is agreed that the witness may not be required to sign his testimony, but that the same may be received with like effect upon the certificate of the Examiner that it is correctly transcribed.

Mr. WALSH.—That is right,

Mr. MAYNARD.—Yes, sir.

Above testimony read by me and found to be correct.

HENRY N. BLAKE,
Examiner in Chancery.

Recess till 2 P. M.

Helena, Montana, Tuesday, Dec. 17th, 1901, 10 A. M.

Hearing resumed pursuant to adjournment.

JOHN MURTAUGH, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your full name?

A. John Murtaugh.

Q. Where do you live?

A. I generally make Missoula my home, but Bonner is generally my postoffice.

Q. How old are you?

A. I should judge about forty now.

Q. What is your business?

A. Lumberman; I work in the woods.

(Testimony of John Murtaugh.)

Q. Have you any family? A. No, sir.

Q. Did you ever enter any land at the land office at Missoula under this Timber and Stone Act?

A. Yes, sir.

Q. When did you make that entry?

Mr. BICKFORD.—We object, because it is not the best evidence of the fact sought to be adduced.

A. In the fall of 1899.

Q. Were you on the land? A. Yes, sir.

Q. Do you know what section it was in?

A. Section twenty-six.

Q. You made but one entry, of course?

A. That is all.

Q. How much money did you pay for that land?

A. I didn't pay any.

Mr. BICKFORD.—We object to that for the reason that the record is the best evidence of the fact sought to be adduced.

Q. Who paid it for you?

Mr. BICKFORD.—We object to that, irrelevant and immaterial.

A. Mr. Cobban.

Q. How did he happen to pay that money for you; tell the facts about it.

A. Well, I went to the land office and proved up and straightened up the accounts, and I went up to his

(Testimony of John Murtaugh.)

office and sold the claim to him, or he allowed me one hundred dollars for it.

Q. Who put you on the claim?

Mr. BICKFORD.—Objected to; immaterial.

A. Mr. Jemison located me.

Q. Mr. Jemison who was sworn here yesterday?

A. Yes, sir.

Q. Where did you see him?

A. At his place.

Q. Whereabouts is that?

A. It is about six miles from Clearwater. Well, I don't know as it is his place; his father was living there at that time, him and his father on a ranch.

Q. What did you do when you saw him there?

Mr. BICKFORD.—Objected to; irrelevant and immaterial.

A. Well, I asked him if he was locating any men on claims and he said he was. I asked him if Cobban and Dinsmore was furnishing the money to file on, and he said yes. He told me they would allow me one hundred dollars for the claim and ten dollars for expenses.

Q. What did you do then?

A. Well, I went and looked at the claim.

Q. How long were you on the claim?

A. Probably an hour or two.

Q. Were you ever on it before? A. Yes, sir.

Q. What for?

A. Why, I was hunting through there.

(Testimony of John Murtaugh.)

Q. Just hunting? A. Yes, sir.

Q. Were you ever on it afterwards?

A. No, sir.

Q. So you were there an hour, you say?

A. Yes, sir, all of an hour.

Mr. BICKFORD.—He said an hour or two.

Q. Well, an hour or two; give him three.

Mr. BICKFORD.—Jemison gave him half a day.

Q. Who did you go with? A. Nobody.

Q. You went alone. What did you do when you were on the land for an hour or two?

A. Well, I just looked it over.

Q. How long after that did you go down to Missoula?

A. I think it was the next day.

Q. Who did you go with?

A. Well, sir, I believe I went alone pretty near all the way.

Q. Did you take anything from Jemison?

A. No, sir.

Q. Any note or anything? A. No, sir.

Q. What money did Albert Jemison give you, if any?

Mr. BICKFORD.—Objected to; irrelevant and immaterial.

A. He didn't give me any money.

Q. Who gave you the ten dollars, if anybody?

A. Well, I got that at Missoula.

Q. Who from? A. Mr. Catlin.

(Testimony of John Murtaugh.)

Mr. BICKFORD.—The same objection; irrelevant and immaterial.

Q. Who gave you the boundaries to the land that that you located? A. Jemison.

Mr. BICKFORD.—The same objection.

Q. As to whether or not you filed on the boundaries of the location that Jemison gave you?

A. Yes, sir, I did.

Q. Did you see Mr. Catlin in Missoula?

A. Yes, sir.

Q. Whereabouts?

A. Well, I believe I see him first in his office.

Q. Did you go there to see him? A. Yes, sir.

Q. Who told you to go there to see him?

Mr. BICKFORD.—Objected to as hearsay; also irrelevant and immaterial.

A. Mr. Jemison.

Q. Who went with you to the land office?

A. Mr. Jemison did; he was one of my witnesses; the other two men's names I don't remember now.

Q. Did Mr. Catlin go with you? A. Yes, sir.

Q. Did you pay any money there yourself?

A. No, sir, I did not.

Q. Did you hear Mr. Catlin say anything there about what he would do, if anything?

Mr. BICKFORD.—Objected to; hearsay; also irrelevant and immaterial.

(Testimony of John Murtaugh.)

Q. The subject matter is about his paying or anything of that kind?

A. Well, I believe I did.

Q. What did he say?

A. He said that he would settle up the accounts; he told the clerk.

Q. How long were you in the land office?

A. I couldn't say now; the first day I was in I was in there an hour or two. Do you mean when I filed or when I made the final proof?

Q. Who got your witnesses for you?

A. Mr. Jemison.

Q. As to whether or not he had charge of the whole matter for you?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. After you left the land office where did you go?

A. Up to Catlin's or Cobban and Dinsmore's office.

Q. What did you do there?

Mr. BICKFORD.—Objected to; irrelevant and immaterial.

Q. Did you sign any papers?

Mr. BICKFORD.—Objected to; leading.

A. Yes, sir.

Q. What was it? A. The final proof.

Q. I mean at Cobban and Dinsmore's office?

A. Yes, sir, Was that when I got the final proof or when I filed?

(Testimony of John Murtaugh.)

Q. I mean after the final proof and so on.

A. Yes, sir, I signed the final proof, or deed.

Q. The deed. Who did you give the deed to?

Mr. BICKFORD.—Objected to; irrelevant and immaterial.

A. I didn't get the deed at all; Mr. Catlin brought it up to the office.

Q. Brought up what?

A. Brought the deed up to the office from the land office.

Q. And what did you do there in Cobban's office then? A. I signed the deed.

Q. What did you get?

A. I got a hundred dollar check on the First National Bank.

Mr. WALSH.—Objected to and we move to strike out the testimony, on the ground that the check itself is the best evidence.

Q. Did you get the check cashed?

A. Yes, sir.

Q. And you said you had been paid the ten dollars for expenses before this?

Mr. WALSH.—Objected to; leading.

A. Yes, sir, when I filed.

Q. Now, did you, from the time that you first went to Jemison about getting this location, did you pay out a cent of your own money?

(Testimony of John Murtaugh.)

Mr. BICKFORD.—Objected to; leading.

A. No, sir, I did not.

Q. What was the distinct understanding, if any, that you had with Jemison about that?

Mr. WALSH.—We object; that the understanding is a matter that is immaterial, irrelevant and incompetent, and it calls for a conclusion from the witness or a deduction from the conversation had, and the only testimony that is relevant and material, if any, is the conversation had between the parties, namely, what was said by this witness and what was said by Jemison.

A. The distinct understanding was that I would get ten dollars for my expenses and one hundred dollars.

Q. One hundred dollars for what?

A. For the claim.

Q. When? A. After I made the final proof.

Q. After you had made the final proof and had done what after that?

Mr. BICKFORD.—Objected to; leading.

A. Then I would get the hundred dollars.

Q. But what were you to do with the land after you had made the final proof, John?

A. I was to sell it to Mr. Cobban, turn it over to him.

Q. And from the beginning was it the distinct understanding that you were to turn your land immediately over after you made the final proof and you were to get one hundred dollars and expenses?

(Testimony of John Murtaugh.)

A. Yes, sir.

Mr. BICKFORD.—Objected to as leading and also because it is an effort to cross-examine his own witness.

Q. You say that you received a hundred dollar check on the First National Bank. Who gave it to you?

A. Mr. Cobban.

Q. Mr. Cobban himself. Who was it signed by?

Mr. WALSH.—Objected to; the check is the best evidence.

(Question withdrawn.)

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Murtaugh, what contract or agreement did you ever make with anybody prior to the time that you filed on this land, that you would convey this land to Mr. Cobban?

A. I didn't make no contract.

Q. With anybody? A. Only with Mr. Jemison.

Q. What I want to know from you is whether you made any contract with Mr. Jemison that you would, when you made final proof on this land, convey the land to Mr. Cobban?

A. Yes, sir, I believe I did.

Q. Didn't you swear that you didn't when you made your final filing? A. Yes, sir.

Q. I wish you would read this paper over. You made that affidavit, did you not? A. Yes, sir.

(Testimony of John Murtaugh.)

Q. This is your sworn statement in connection with cash entry No. 1196, upon which you filed on this land, isn't it? A. Yes, sir.

Q. Now, in this you swear as follows: "I do not apply to purchase the land above described for speculation but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." You swore to that, didn't you?

A. Yes, sir.

Q. Is that true? A. No, sir.

Q. I show you the testimony given by you on your final proof in connection with the same entry. That is your signature, isn't it? A. Yes, sir.

Q. Now, in that final proof you were asked the following question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?" To which you answered, "No, sir," did you not? A. I didn't understand.

(Testimony of John Murtaugh.)

Q. To that question you answered, "No, sir," did you not? A. Yes, sir.

Q. Was that true; what have you to say, sir?

A. Is what?

Q. Was your answer true?

Mr. MAYNARD.—Be sure you understand the question before you answer.

A. Well, no, I don't think it was.

Q. What is it?

A. I didn't understand the question just right.

Q. (Question read from final proof.)

A. Yes, sir.

Q. What have you to say; is that true or not?

A. Well, I don't think it is true.

Q. What isn't there true about it?

A. Well, I don't know as I made any real agreement to turn it over.

Q. Very well; that is what I want to know from you. Did you say to Mr. Jemison at that time that you would, after you had made final proof, convey this land to Mr. Cobban?

A. (Hesitating.) I will answer that in just a minute. (Hesitating.) Yes, sir.

Q. You told Mr. Maynard what you said to Mr. Jemison, didn't you? A. I believe I did.

Q. And you told Mr. Maynard what Mr. Jemison said to you, didn't you? A. Yes, sir.

Q. Did you tell Mr. Maynard, in answer to his ques-

(Testimony of John Murtaugh.)

tion, that you said anything to Mr. Jemison to the effect that you would transfer this land to Mr. Cobban; did you tell him a moment ago that you said anything of that kind? A. Well, I believe I did.

Q. Now, let us start in again and find out what that conversation was; you asked him in the first place if he was locating people on timber lands?

A. Yes, sir.

Q. He said he was? A. Yes, sir.

Q. You asked him if Mr. Cobban was furnishing the money with which to make final proofs, and he said he was? A. Yes, sir.

Q. You asked him what you could sell the claim for after you made final proof, and he told you you could sell for one hundred dollars and ten dollars for expenses over and above what it cost you?

A. Yes, sir.

Q. That is all you told Mr. Maynard, wasn't it?

A. I believe it was.

Q. Now, was there any other conversation with Jemison?

A. Well, I don't know just now, but I believe there was.

Q. If there was anything else, I wish you would tell what it was.

A. I believe I asked him if they would take the land all right after I had made final proof, and I believe he told me they would.

(Testimony of John Murtaugh.)

Q. Are you quite sure that you had that conversation, or are you just merely guessing at it?

A. I am sure; pretty sure.

Q. You asked him if they would take the land after final proof had been made, and he said they would?

A. Yes, sir.

Q. And you could sell it to them for one hundred dollars over and above whatever expenses there were?

A. Yes, sir, that was the talk.

Q. Was there any other conversation?

A. No, I don't think there was.

Q. Now, you have not told us now that you ever said to Mr. Jemison that you would, after final proof had been made, convey this land to Mr. Cobban, have you?

A Yes, sir.

Q. You have said so? A. Yes, sir.

Q. When did you say so? A. (No answer.)

Q. We will go over it once more. You asked Mr. Jemison if he was locating people on timber lands?

A. Yes, sir, I did.

Q. He said he was? A. Yes, sir.

Q. You asked Mr. Jemison then if Cobban and Dinsmore were furnishing the money to make final proofs?

A. Yes, sir, I did.

Q. And he said they were? A. Yes, sir.

Q. And you asked him what you could sell the claim for after you had made final proof, and he told you you could get one hundred dollars for it over and above

(Testimony of John Murtaugh.)

expenses, and they would allow you ten dollars for expenses? A. Yes, sir.

Q. And then you asked him if they would take the land at that figure after you had made final proof and he said they would? A. Yes, sir.

Q. Now, was there any other conversation?

A. No, I don't think there was.

Q. That was the extent of the conversation, was it?

A. I think so.

Q. You don't remember anything else that was said between you and Jemison at that time?

A. No, I don't.

Q. Now, don't you see, Mr. Murtaugh, that you have not told me that you said anything in the course of that conversation except these questions that I have asked you now?

Mr. MAYNARD.—I object to that question as improper and incompetent and not legitimate cross-examination; the conclusions from the testimony is another thing entirely. He is testifying to what took place.

A. I don't understand.

Q. Have you told me everything that was said between you and Mr. Jemison? A. I think so.

Q. You have told me everything that you said and everything that Mr. Jemison said as far as you can recollect it?

A. Yes, sir. We had a little more of a conversation, but I don't just remember it all.

(Testimony of John Murtaugh.)

Q. Is there anything more that you remember?

A. No, only just that conversation.

Q. And if there was any contract made between you and Mr. Jemison, it was made in this language that you have spoken of now? A. Yes, sir.

Q. There was no other language used between you and him in reference to any contract that should exist about this matter?

A. No, sir, I don't think there was.

Q. So that if that was a contract, why, there was a contract, and if it was not a contract, there was not any contract; is that the understanding?

Mr. MAYNARD.—That is a question of law; I object to it on that ground; let him testify to what he said and let it go at that.

Q. Is that what you mean, Mr. Murtaugh?

A. Yes, sir.

Q. Now, you told me, didn't you, over in Butte last week the first day that you came there, up in Judge Bickford's office in the presence of Mr. Bryan and Judge Bickford, and Mr. Cobban and myself, that you never made any contract or agreement prior to the time that you made final proof that you would convey this land to anybody? Didn't I ask you that direct question?

A. Yes, sir.

Q. And didn't you say that there was not, and that you had not made any such contract or agreement with anybody?

(Testimony of John Murtaugh.)

A. I answered just the same as the answer is there.

Q. Tell me now whether you said yes or no to my question. A. (Hesitating.) I don't remember.

Q. Do you remember the occasion in the evening about half past seven?

A. Yes, sir, I remember being up there.

Q. Do you remember my asking you that question, whether you had agreed or contracted before you made this filing that you would sell and convey this land to Mr. Cobban; do you remember my asking you that question? A. Yes, sir.

Q. And do you remember your answer to it?

A. I do.

Q. What did you say, yes or no?

A. I think I told you just how it was.

Q. Did you answer me yes or no?

A. (Hesitating.) I wouldn't say now.

Q. Didn't you as a matter of fact say, "No, I never made any agreement to that effect"?

Mr. MAYNARD.—He has answered that three times now, and I object to counsel again interrogating him on that point, as not legitimate cross-examination.

The EXAMINER.—Read the question.

Q. (Question read.)

A (Hesitating.) I don't believe that I said that I did.

Q. Don't you believe that you said you didn't; don't you know that you didn't? It is only a short period of a

(Testimony of John Murtaugh.)

week ago, to remember what it was you told me. Don't you know that you told me you didn't?

A. (Hesitating.) No, I don't.

Q. Who did you talk with last before you came upon the stand about what you were going to testify to?

A. Mr. Griswold. I didn't speak nothing about what I was going to testify.

Q. Where did you see Mr. Griswold?

A. I see him here.

Q. Where? A. Out there in the hall.

Q. What did he have with him at the time that he was talking with you?

A. He had the testimony out there that I gave.

Q. Some testimony that you gave? A. Yes, sir.

Q. Before Mr. Zevely? A. Yes, sir.

Q. Mr. Griswold took you out in the hall; what did he do with that testimony?

A. He was just looking at it, that was all.

Q. Reading it over?

A. Yes, he read one piece over to me there.

Q. Mr. Griswold took this testimony out in the hall and read it over to you just before you went on the witness stand?

A. Just one piece; I didn't know I was going on.

Q. What did Mr. Griswold say to you?

A. He didn't say nothing.

Q. Just simply took you out in the hall and read this testimony over and said nothing? A. Yes, sir.

(Testimony of John Murtaugh.)

Q. That was what happened, was it?

A. Yes, sir.

Q. How did you come to go out in the hall?

A. I believe I was out there when he came out.

Q. You were out there, Mr. Griswold came out, and what did he say?

A. I don't remember now just what he did say, what we were talking about.

Q. You don't know what he did say? What did he want you for; what did he want to talk with you about?

A. He didn't want me at all.

Q. How did you come to be reading over this testimony?

A. There was one word in there I wanted to mark out.

Q. Did you ask Mr. Griswold to get that testimony and bring it out in the hall? A. Yes, sir.

Q. When did you ask him? A. Right then.

Q. When? A. When I was out there.

Q. How did you come to be doing that?

A. Because there was one word in there I wanted to mark out.

Q. What was that?

A. A question that Mr. —— asked me there, what I done with the ten dollars, and I told him I spent it for booze, and I wanted to mark that out.

Q. And you told Mr. Griswold to go and get this testimony? A. Yes, sir.

(Testimony of John Murtaugh.)

Q. Why didn't you come to Mr. Maynard for it?

A. He wasn't in here at that time, I don't think.

Q. Wasn't Mr. Griswold carrying this testimony around with him? A. No, sir.

Q. Where did he get it? A. There on the table.

Mr. MAYNARD.—I object to all this question as immaterial and irrelevant, and not legitimate cross-examination beyond the point that he has now gone.

Q. Why did you want to strike that out; wasn't it the truth? A. Well, I guess it was mostly.

Q. Now, when did you first see Mr. Cobban about this matter?

A. The first I see Mr. Cobban to know him, I see him in his office.

Q. That was after you had made the final proof?

A. Yes, sir.

Q. You never saw him before that time?

A. Not that I know of.

Q. Never talked with him about this matter?

A. No, sir.

Q. From whom did you get this ten dollars?

A. Mr. Catlin.

Q. How long was that before you made the final proof?

A. It was the day I filed.

Q. You borrowed that money from him, didn't you?

A. No, I don't think I did.

Q. Well, you gave him a memorandum saying that he had loaned you ten dollars, didn't you?

(Testimony of John Murtaugh.)

A. No, sir.

Q. You think not? A. I think not.

Q. You would recognize your signature if you saw it, I suppose, wouldn't you? A. I would, yes, sir.

Q. But you don't remember anything of that kind?

A. No, sir, I don't.

Q. Had you been drinking some before you got this ten dollars? A. No, sir.

Q. Perfectly sober, then, were you?

A. Well, I wouldn't say I was perfectly sober; I might have a few drinks.

Q. At least, you were sober enough to know perfectly what you were doing? A. Yes, sir.

Q. Now, what have you to say as to whether you did or did not sign a memorandum at that time to the effect that this ten dollars was advanced to you by way of a loan?

A. Well, I wouldn't be positive whether I did or not.

Q. Did you ever hear anything about the matter?

A. No, sir.

Q. That looks like your signature, doesn't it (showing paper)? A. Yes, sir.

Mr. MAYNARD.—Let me see that, please?

(Paper handed to Mr. Maynard.)

Mr. WALSH.—Oh, gentlemen, the matter concerning which the witness was interrogated was his own, not anybody else's; just that at the bottom of the page.

Mr. ZEVELY.—We have a right to look at this?

(Testimony of John Murtaugh.)

Mr. WALSH.—You have a right to look at that concerning which he is interrogated, that is all. There is no particular objection to your seeing the whole paper, but that was all the witness was asked about.

Mr. ZEVELY.—We have a right to everything that is marked on there.

Q. I wish you would look that over, Mr. Murtaugh, can you read it? A. Well, I can't read very well.

Q. No, this down here is what I called your attention to, the part above your signature. Can you read it?

A. Yes, sir.

Q. I wish you would read it, please?

Mr. MAYNARD.—I object to that as not legitimate cross-examination.

Q. Read it aloud, please? A. I can't.

Q. Well, I will read it to you. "Missoula, Montana, September 22d, 1899. Received of R. M. Cobban as a loan the sum of ten dollars. John Murtaugh." That is your signature, isn't it? A. Yes, sir.

Q. You evidently heard some time or other about a loan of ten dollars, didn't you, on September 22d, 1899, didn't you? A. I know I got the ten dollars.

Q. You know you signed this paper, don't you?

A. Yes, sir.

Q. Yet you don't remember anything at all about that, or having signed this paper? A. (No answer.)

Q. Now, Mr. Murtaugh, that your attention has been

(Testimony of John Murtaugh.)

called to your signature to this paper, I will ask you if you remember signing it?

A. (Hesitating.) I believe I do.

Q. You think you do. Who was present at the time you signed it?

A. I don't know who was in there.

Q. What was said?

A. That I couldn't tell you.

Q. Don't remember that either. Have you any recollection at all about it?

A. No, I have no recollection of what was said.

Q. Wasn't it said that you would be obliged to pay this money back when you sold the land eventually?

Mr. MAYNARD.—He says he has no recollection.

Mr. WALSH.—I am trying to refresh his recollection.

Q. Wasn't that said?

A. I don't remember whether it was or not.

Q. You wouldn't say that it wasn't?

A. No, nor I wouldn't say that it was; I don't remember.

Q. Were you indicted for illegal acts in connection with this entry of yours, Mr. Murtaugh?

A. No, sir.

Q. There is no indictment against you?

A. No, sir, not that I know of.

Q. Weren't you ever arrested? A. No, sir.

Q. Did you give any bonds? A. No, sir.

(Testimony of John Murtaugh.)

Q. There were no findings against you of any kind that you know of? A. No, sir.

Mr. MAYNARD.—Do you offer that paper in evidence?

The EXAMINER.—No, it has not been offered in evidence.

Mr. MAYNARD.—Let me take that paper, please?

Mr. COBBAN.—We have some private matters on there.

Mr. MAYNARD.—I want to identify the paper.

Mr. BICKFORD.—We are not going to have it identified at the present time; if we offer it, we will offer it later.

Q. Who talked to you about this matter before you came to Butte or Helena as a witness in this case?

A. Who talked to me about it? Nobody.

Q. How did you come to be present at the time you gave this affidavit before Mr. Zevely?

A. Well, Mr. Griswold asked me to make the affidavit.

Q. Where did Mr. Griswold find you?

A. At Missoula.

Q. What did he say to you?

A. He just asked me if I would make an affidavit about the claim that I took up, and I told him that I would.

Q. Is that all he said? A. That is all.

Q. When was this?

(Testimony of John Murtaugh.)

A. I think it was in May, April or May; I wouldn't be sure now just when it was.

Q. When was it with reference to the time that you made the affidavit?

A. It was right that day that he asked me.

Q. The same day? A. Yes, sir.

Q. You went right up and made the affidavit at once?

A. Yes, sir.

Q. Did Mr. Griswold ever say anything to you about it before that time? A. No, sir.

Q. What induced you to go up and make the affidavit?

A. Nothing; I just went up of my own accord.

Q. For what purpose?

A. Just because he asked me.

Q. What did you make it for; why was your affidavit wanted? A. I don't know.

Q. That is all the conversation that you had with Mr. Griswold; he just asked you to go up and make an affidavit? A. That is all.

Q. And you did? A. Yes, sir.

Q. You knew that he had an action pending in court there against Mr. Cobban?

A. Yes, I knew he had an action.

Q. You knew about that?

A. Yes, I knew of it, but not from him.

Q. How long had you known about that?

A. I don't know how long it was.

Q. From whom did you learn of it?

(Testimony of John Murtaugh.)

A. That I couldn't tell you, but I believe, if I remember right, Mr. Griswold told me that he had trouble with him and wanted me to make an affidavit; that was all the conversation I had with Mr. Griswold.

Q. And when was that?

A. That was the same day I made the affidavit.

Q. Mr. Griswold told you that he had some trouble with Mr. Cobban and he wanted you to make an affidavit?

A. Yes, sir.

Q. And you went up before Mr. Zevely and made this?

A. Yes, sir.

Q. You had known at that time, as I understand you, that this suit was pending?

A. I don't understand you.

Q. You knew at this time that this suit was actually going on between Mr. Cobban and Mr. Griswold?

A. Yes, sir.

Q. Had the suit been settled up then?

A. I don't know.

Q. Did you hear of its being settled?

A. No, sir, I didn't.

Q. You don't know whether it is pending yet or not?

A. No, I don't.

Q. Where do you live?

A. Well, I generally stop in Missoula when I am not working.

Q. How long have you been staying in Missoula during the last year?

A. That is a pretty hard question to answer.

(Testimony of John Murtaugh.)

Q. Where have you worked this last year?

A. Well, I worked up in the Bitterroot Valley.

Q. Where? A. For Kendall Bros.

Q. How long did you work for them?

A. Three months.

Q. During what period?

A. June, July, and August, I think.

Q. Of this present year? A. Yes, sir.

Q. What did you do there?

A. I was working in the kitchen.

Q. Cooking? A. No, I was second cook.

Q. What else did you do this last year?

A. Well, I worked at Bonita a while.

Q. For whom? A. For Morrison.

Q. What did you do there?

A. I was working in the kitchen.

Q. Cooking? A. No, sir.

Q. You were second cook there? A. Yes, sir.

Q. What time in the year was it that you were working there? A. Some time in February, I think.

Q. How long did you work there?

A. I believe I worked about four days, then I had to go to the hospital.

Q. The hospital at Missoula? A. Yes, sir.

Q. Where else did you work this last year?

A. I believe I worked about a month for—do you mean since a year ago this time—that would be 1900. Well, I worked in the Blackfoot a year ago last summer; I worked in the Blackfoot pretty near all summer.

(Testimony of John Murtaugh.)

Q. Well, I am speaking of this last year, since the 1st of January, 1901?

A. Well, I worked a month up on the Blackfoot.

Q. For whom? A. Mr. Stairs.

Q. What were you doing there?

A. Cutting wood.

Q. Where else?

A. I guess that is about all the work I done since then.

Q. You worked at Bonita a few days, and up the Blackfoot about a month, and for the Kendalls three months? A. Yes, sir.

Q. The rest of the time you were around Missoula?

A. Not altogether in Missoula; I was in the hospital about six weeks.

Q. That was in Missoula, wasn't it?

A. Yes, sir.

Q. Where else have you been, then?

A. Well, I was up in Camas Prairie a while; I couldn't say how long I was up there.

Q. Any place else? A. No, I believe not.

Q. That covers it. The balance of the time you were in Missoula?

A. Well, I don't know. I was up on Camas Prairie quite a while, but I don't know how long I was up there.

Q. Well, you have told us about that. Were you anywhere else, or were you the balance of the time in Missoula? A. I believe I was.

Q. Where do you stay when you are in Missoula?

(Testimony of John Murtaugh.)

A. I room up in the Hammond Block—I think it is in the Hammond Block; right over the Montana Saloon.

Q. Where do you get your meals?

A. Different places.

Q. What hospital were you in?

A. The Sisters' Hospital.

Q. You have not done any work since August?

A. Yes, sir; I have.

Q. Where did you work since August?

A. I told you on the Blackfoot.

Q. When did you work on the Blackfoot?

A. I believe it is three weeks ago since I was there; I think it was the first of the month.

Q. And you had been there about a month, so you went to work there about the first of November, and worked through the month of November?

A. I believe it is.

Q. You didn't do anything at all during September and October? A. I don't think I did.

Q. What money have you gotten out of this matter?

A. I haven't got any, only just what mileage I got.

Q. What mileage did you get?

Q. You mean for this trip?

Q. Out of this investigation?

A. Well, the last time I was over in Butte I got sixteen dollars.

Q. What else did you get? A. That was all.

Q. You got no more? A. No, sir.

(Testimony of John Murtaugh.)

Q. From anybody?

A. No, sir. Well, I believe I did; I believe I borrowed four dollars from Jemison.

Q. Is that all you have had?

A. That is all.

Q. Did you borrow any from Mr. Griswold?

A. No, sir.

Q. You are not employed at any calling now?

A. No, sir.

Q. And you have no work anywhere?

A. Well, I have got a job waiting for me when I get back.

Q. Where? A. At Bonita.

Q. With whom?

A. With Murphy and Ward of Missoula; they own the outfit now; and they have got a man by the name of Dan Graham looking after it.

Q. What are you going to do there?

A. Work in the woods?

Q. Where was this that you saw Jemison at the time you went to ask about this land?

A. At his place or his father's place.

Q. Where were you living at that time?

A. I was working up on Placer Lake, on a dam.

Q. For whom?

A. For a man by the name of Campbell, for the Blackfoot Milling Company.

Q. Where was Jemison at that time?

A. I guess he was at home.

(Testimony of John Murtaugh.)

Q. Are you sure about that?

A. When I came there to see, him, yes, sir,

Q. Why did you go there?

A. Well, I went down to see him just because I wanted to get a claim. Johnny Gilles told me he was locating men on the claims.

Q. You are familiar with that country, as I understand you? A. Yes, sir.

Q. Had hunted through it? A. Yes, sir.

Q. Mr. Jemison didn't go with you to the claim?

A. No, sir.

Q. He told you where it was?

A. He told me where it was vacant; he told me where the vacant claim was.

Q. Did you go and look at it? A. Yes, sir.

Q. Were there any other vacant claims up there?

A. No, sir; I don't think there was now.

Q. You didn't know what claims had been taken, and what hadn't? A. Not till I see him, I didn't.

Q. What did you do when you went on the land?

A. I looked it over.

Q. Why did you do that?

A. I wanted to see whether there was any timber on it or not, and how much there was.

Q. What did you want to find that out for?

A. I wanted to see if there was timber enough on it to pay for taking it up.

Q. How much timber did you find on it?

A. Oh, I should judge about eight hundred thousand.

(Testimony of John Murtaugh.)

Q. Where was it located with reference to the stream? A. With reference to the Blackfoot?

Q. Yes.

A. Oh, I should judge about seven miles.

Q. Is that the nearest water to it?

A. No, there is several little creeks in that country there.

Q. How near is the nearest one?

A. Well, I couldn't say how near it is.

Q. How did you travel over the claim?

A. Afoot.

Q. And to what extent did you go over it; where did you go, along the lines or otherwise?

A. Yes, I went along the lines.

Q. Did you go through it? A. Yes, sir.

Q. How could you tell this particular claim?

A. Jemison gave me the location of it, and then I could tell it.

Q. Could you distinguish the corner marks?

A. Yes, sir.

Q. You found those, did you? A. Yes, sir.

Q. Did you go round to all four of them?

A. Yes, sir.

Q. And went through it? A. Yes, sir.

Q. How many ways did you go through it?

A. Well, I don't know now how many ways I did go through.

Q. Did you cross through it more than once?

A. Yes, sir.

(Testimony of John Murtaugh.)

Q. How many times?

A. I should judge three or four times.

Q. You satisfied yourself that there were eight hundred thousand feet of timber on it?

A. Yes, sir; I think there was.

Q. You don't know the names of any of those creeks there, do you?

A. Elk Creek—not Elk Creek, but Belmont Creek.

Q. How far away is that?

A. I don't just know now; it is not far, I don't think.

Q. How did Mr. Jemison describe to you the location of it?

A. I don't remember just how he did.

Q. You know where Blanchard Creek is, don't you?

A. Yes, sir.

Q. How far away is that?

A. From Elk Creek?

Q. No, but from your claim?

A. I don't know just the way Blanchard Creek runs up in the mountains; I have been up there, too; there is two forks to it.

Redirect Examination.

(By Mr. MAYNARD.)

Mr. MAYNARD.—Will you just let me take that paper that Mr. Murtaugh signed?

Mr. WALSH.—Here it is.

Q. This paper, Mr. Murtaugh, on which your signa-

(Testimony of John Murtaugh.)

ture appears, to which counsel on the other side called your attention, I desire to read. It is a letter blank—

Mr. WALSH.—One moment. You cannot have it for that purpose, Mr. Maynard. If you desire to cross-examine the witness concerning it, you can have it, but otherwise you cannot have it.

Mr. MAYNARD.—Counsel for the defendant—

Mr. WALSH.—You may take down that, Mr. Maynard says so.

Mr. MAYNARD.—Counsel for the defendant, on cross-examination of the witness, have produced a paper which they claim to have been signed by Mr. Murtaugh, acknowledging receipt of ten dollars, and they have examined him on this subject. I request of counsel the delivery to me of the paper for the purpose of an examination of the witness on this point, which they themselves have called out. The paper is refused me. I insist that the paper, which is a letter blank of Cobban's, and is dated at Butte with the figures 189—, and no other date, —that there are four or five other entries on this one letter sheet and that at the bottom is this alleged receipt of Mr. Murtaugh. I seek this paper for the purpose of examining the witness on the facts and circumstances connected with the signing of this receipt, if he ever did sign it, and the demand and request is made upon counsel for that purpose.

(Testimony of John Murtaugh.)

Mr. BICKFORD.—Tennyson's Brook has gone crooked this morning.

Mr. WALSH.—You may now take the statement of defendant's counsel. At the time the witness was interrogated concerning the receipt signed by him, the counsel for the Government requested to be permitted to inspect the paper concerning which the witness was interrogated. That thereupon counsel for the defendant handed the paper to the counsel for the government, and he inspected the same and returned it to the counsel for the defendant. That after the cross-examination was completed, the counsel for the Government again requested to be handed the paper, and the counsel for the defendant handed him the paper. The counsel for the Government then proceeded to do what he calls reading the paper into the record. The paper contains a number of memoranda in addition to the receipt of the witness upon the stand. The counsel for the defendant objected to the counsel for the Government doing with the paper what he calls reading it into the record, and demanded that it be returned to the counsel for the defendant, and it was returned to him. The counsel for the defendant now states that the counsel for the government may have the paper for the purpose of cross-examining the witness, so far as he may care to cross-examine the witness concerning the time, place and circumstances of his signing the receipt signed by him upon the paper, but the counsel for the defendant refuses to

(Testimony of John Murtaugh.)

permit the use of the paper by the counsel for the Government for any other purpose.

Q. Now, Mr. Murtaugh, you say that this ten dollars was given to you by Mr. Catlin, and you spent it?

A. Yes, sir.

Q. Have you any recollection at all now of ever having had such a paper as counsel have shown you—ever having signed such a paper as that?

A. I have no recollection of it, but that is my signature on there,

Q. And how that signature came there you don't know?

A. I might have signed it; I wouldn't say that I didn't remember of it.

JOHN MURTAUGH.

Subscribed and sworn to before me this 18th day of December, 1901.

HENRY N. BLAKE,
Examiner in Chancery.

CHARLES B. SPERRY, after being duly sworn as witness for complainant, testified as follows:

Direct Examination.

(By Mr. ZEVELY.)

Q. Your name is Charles B. Sperry?

A. Yes, sir.

Q. State your full name and your residence and occupation, please.

(Testimony of Charles B. Sperry.)

A. My name is Charles Burton Sperry.

Q. Where do you live?

A. On the Clearwater, and a rancher by occupation. I live on the Blackfoot, rather, not on the Clearwater.

Q. Did you, in the fall of 1899, make an entry under what is known as the Timber and Stone Act?

A. I did.

Q. Do you remember where you made that entry, Mr. Sperry?

A. I do not, but I think it was in section twenty-six; I am not positive, but I think it was.

Q. How did you come to make that location, Mr. Sperry?

A. I went from the city of Helena to the Clearwater country with the express purpose of taking up land; that was my purpose when I left here.

Q. You don't remember that that tract of land is the north half of the northwest quarter, the southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter of section twenty-four, township fourteen north, range fourteen west?

Mr. BICKFORD.—Objected to; leading.

A. I couldn't say as to that, but I expect that is right.

Q. Now, when you went from Helena to the Clearwater, did you go to see anyone with reference to selecting a location to make under this Timber and Stone Act?

(Testimony of Charles B. Sperry.)

Mr. BICKFORD.—Objected to; leading.

A. No, sir, I don't know as I did.

Q. What did you do when you got to the Clearwater, Mr. Sperry?

A. Whom you mean in regard to this land?

Q. Certainly.

A. Well, in order to explain that, I have got to tell something else that happened before this.

Q. Well, let us have it.

A. The people that I was acquainted with over there told me that there was an agent there—

Q. Who were these people?

Mr. BICKFORD.—Objected to; hearsay.

A. I guess there was a dozen different ones.

Q. Tell some of their names.

A. Two Mr. Watsons and his family, and Mr. McConnell and Mr. Hoyt, I don't know how many; I talked with different parties.

Q. Go on and state what they told you.

Mr. BICKFORD.—Objected to; hearsay.

A. What do you mean?

Q. You said you had to make some explanation.

A. Well, they told me there was people in there that was buying timber claims, and asked me why I didn't take a timber claim. I told them I didn't know anything about a timber claim, and they explained how I could get it, that it would cost me two dollars and a half an acre and so much for advertising and

(Testimony of Charles B. Sperry.)

other expenses, and they told me that this agent would furnish this money.

Q. What agent?

A. Mr. Griswold would furnish this money, would advance this money to pay for the filings and for making the final proof without interest or security, and if I wanted to take a timber claim that I could take it in that way, and after I had made my final proof, if I felt disposed to sell it, if it was examined by their agent and accepted by him, that they would take that land if I was disposed to sell it for one hundred dollars and expenses.

Mr. BICKFORD.—We move to strike the statement of the witness out because it is hearsay, and further, because it is irrelevant and immaterial.

Q. Now, just tell us what you did when you got to the Clearwater.

A. I proceeded at once to get a timber claim.

Q. Did you see anybody there about getting a location; did you see this agent, Mr. Griswold?

A. No, sir, I did not.

Q. Who took you to the timber claim?

A. I think Mr. McConnell was with me.

Q. You were familiar with that country?

A. No, I was not at that time.

Q. How did you find this claim?

A. I didn't find it the first time.

Q. Didn't you go on to the claim at all?

(Testimony of Charles B. Sperry.)

A. He took me there, and after we went there I took Mr. Griswold to it afterwards, but I didn't find it then but I found one afterwards.

Q. Did you find a claim at all when you first went?

A. No, sir; I found a claim, but it was already taken.

Q. When you went on this claim that you took, who went with you? A. Mr. McConnell.

Q. Anybody else? A. Not the first time.

Q. Did you go again? A. Yes, sir.

Q. Who went with you then?

A. Mr. Griswold and Mr McConnell.

Q. He took you to the claim that you finally located. did he, the second time?

A. Well, he didn't take me; I rather took him.

Mr. BICKFORD.—Objected to; leading.

Q. He went with you at all events?

A. Yes, sir.

Q. Now, what, if any, conversation did you have with Mr. Griswold at that time with reference to your locating this claim and the disposition of it?

A. I didn't have any.

Q. No talk with him at all?

A. Not that I remember of.

Q. You didn't discuss with him what you had heard with reference to that matter? A. No, sir.

Q. After you went on the claim what did you do?

A. I think Mr. Griswold ran out the lines for me and showed me the corners—described the land; I wasn't

(Testimony of Charles B. Sperry.)

familiar with running the lines. We looked at the timber to see if it had the proper amount of timber on it.

Q. After you did that, what next step did you take?

A. I came to Helena and filed on it after he had given me the description of the land and I had showed him the claim and got what I wanted.

Q. He gave you the description of the land and you came to Helena and filed on it? A. Yes, sir.

Q. Did you come immediately to Helena?

A. I came the next day.

Q. What did it cost you to come to Helena?

Mr. BICKFORD.—Objected to; irrelevant and immaterial.

A. I couldn't tell you.

Q. Were you living here then? A. Yes, sir.

Q. Did anyone pay your expenses coming over here?

A. I had money of my own.

Q. Did anyone reimburse you; were you paid back that money? A. In a way.

Q. Well, let us have it.

A. Mr. McConnell and I came together, and Mr. McConnell didn't have the money to pay for his filings; Mr. Griswold gave me, I believe it was ten or fifteen dollars; he handed it to me instead of McConnell to pay McConnell's expenses, and I don't know but I used some of that money; I couldn't say whether I did or not.

Q. How much would the expenses be coming from there here?

(Testimony of Charles B. Sperry.)

A. I couldn't tell you that; I came by private conveyance; I didn't keep track of what I eat.

Q. You don't know how much Griswold gave you?

A. He gave me either ten or fifteen dollars.

Q. You and McConnell came to Helena alone?

A. No, sir.

Q. Who came with you?

A. My three boys and two girls.

Q. What are their names?

Mr. BICKFORD.—Objected to; immaterial.

Q. Did they make entries? A. No, sir.

(Question withdrawn.)

The WITNESS.—And Mr. McConnell's daughter also came.

Q. What did you do after you got to Helena with reference to filing on that land?

A. We went out and filed on it at the land office.

Q. You and McConnell alone went and filed on it?

A. Yes, sir.

Q. Griswold wasn't with you? A. No, sir.

Q. Or anybody else? A. Not that I recollect.

Q. Did you give the names of your witnesses then for your final proof? A. Yes, sir.

Q. Who were they?

A. Well, I can't tell but one; Mr. Griswold was one.

Q. Who furnished this list to you of your witnesses, did you make up the list yourself?

(Testimony of Charles B. Sperry.)

A. I think Mr. Griswold told me who I had better have with us as witnesses.

Q. He told you who to have as witnesses?

A. I think he did.

Q. And you gave those names to the register or officer of the land office here?

Mr. BICKFORD.—Objected to; leading.

A. Yes, sir.

Q. What next step did you take with reference to this land?

A. I went back on the land before it was time to prove up on it, to make the final proof.

Q. Did you have any advertisement printed giving notice of the fact that you intended to locate this land?

A. Yes, sir.

Q. Where did you have that printed?

A. It was in a little paper out there somewhere, I don't know what the name of it is.

Q. Who had that printed for you; did you attend to that yourself?

A. Oh, no; I think that, as well as I can remember, Mr. Frank Rees did that business for me.

Q. Where does he live?

A. He lives at Helena.

Q. What is his business?

A. He is a land attorney.

Q. He attended to that for you?

A. Yes, I think he did.

(Testimony of Charles B. Sperry.)

Q. You don't know that he did?

A. Well, I am pretty positive that he did.

Q. Did you pay for the advertisement?

A. Yes, sir.

Q. Where did you get the money with which to pay for the advertisement?

A. Well, I couldn't tell you where I got it; I had it.

Mr. BICKFORD.—We object to that as irrelevant and immaterial, and also leading.

Q. Was it yours?

A. I couldn't say where I got the money; I had the money.

Q. Was it your own money; was it money you had earned? A. Yes, sir, my own money.

Q. It was not money that someone had given you to pay for that advertisement?

A. Well, now, I told you I didn't know whether I used part of that money that Mr. Griswold gave me or not; I might have used a dollar or two of it. and I might not.

Q. You said awhile ago that Mr. Griswold—let us understand this—that Mr. Griswold gave you ten or fifteen dollars, to pay McConnell's expenses in coming from Clearwater to Helena? A. Yes, sir.

Q. And that you may have used some of that yourself to pay your expenses in coming to Helena?

A. Yes, sir.

Q. Now, you cannot say whether any of that money

(Testimony of Charles B. Sperry.)

was left or not, or whether you used any of that or not with reference to the advertisement?

A. I could not, no, sir.

Q. Do you know who printed Mr. McConnell's advertisement, or where it was published?

A. It was published in the same paper, and the same man attended to the business.

Q. At the same time. Do you know who paid for that? A. I don't know.

Q. Did you pay for it?

A. I think I gave Mr. McConnell this money, or the most of it; I think he paid for his own.

Q. You think he paid for his own out of the money that you gave him, that Griswold had given you?

A. That is my recollection, yes, sir.

Q. Isn't it true that the purpose was for Mr. Griswold to give you and Mr. McConnell both sufficient money to pay all expenses in connection with filing and making this proof?

Mr. BICKFORD.—Objected to as irrelevant and immaterial, and for the further reason that the question is leading, and is an evident effort on the part of counsel to cross-examine his own witness.

A. You mean that it was Mr. Griswold's intention to give me this? I don't know what Mr. Griswold's intention was.

Q. I mean, if the agreement and understanding be-

(Testimony of Charles B. Sperry.)

tween you and Griswold at the time you made this location was not that they were to pay all the expenses?

Mr. BICKFORD.—We want to interpose the same objection to that question that we interposed to the other.

A. Yes, sir; that was the way I understood it.

Q. That they were to pay all expenses?

Mr. WALSH.—Objected to; leading.

A. Yes, sir.

Q. Now, Mr. Sperry, what was your next step in reference to proving up on this claim?

A. Well, I came here and proved up on it.

Q. Who came with you when you came to prove up?

A. Mr. McConnell and Mr. Griswold—wait a minute—I came alone, well, not alone, but I came on the cars with no one interested in this case with me; I came by myself.

Q. Do you remember who were your witnesses?

A. Mr. Griswold, I am satisfied, was one, and I believe Mr. McConnell was the other, but I am not certain.

Q. Do you know about when it was that you came here to make your final proof, approximately?

A. I believe it was in October or November of the same year.

Q. At the time you made your final proof, did you pay any money to the register or receiver of the land office at Helena?

Mr. BICKFORD.—Objected to because it is not the best evidence of the fact sought to be adduced, and be-

(Testimony of Charles B. Sperry.)

cause it is irrelevant and immaterial, and for the further reason that it is leading.

A. You mean did I hand him the money myself?

Q. Yes, the four hundred dollars?

A. No, sir, I did not.

Q. Did you see the money paid to him?

A. No, sir, I did not.

Q. You don't know who paid it to him as a matter of fact? A. No, sir.

Q. I hand you the final receipt of John Horsky, receiver of the land office at Helena, dated November 12th, 1899, for the sum of four hundred dollars. Did you ever see that receipt before?

A. I don't remember ever seeing it before, but I directed where it should be left.

Q. It was not delivered to you at the time you made your final proof; there was not any paper delivered to you when you made your final proof, was there?

Mr. BICKFORD.—Objected to; leading.

A. I don't think so, no, sir.

Q. Do you know who did pay that money, Mr. Sperry?

A. Not positively; that is, I don't know positively who handed it in to the office.

Q. Do you know whose money was paid for it?

A. Yes, sir.

Q. Whose was it? A. Mr. R. M. Cobban's.

Q. After you had made your final proof here at the Helena office, what did you next do?

(Testimony of Charles B. Sperry.)

A. I went home.

Q. Did you sign any papers in connection with that business that day? A. No, sir.

Q. Do you own that land still?

A. No, sir.

Q. To whom did you sell that land?

Mr. BICKFORD.—We object, because the record or the paper is the best evidence as to who owns the land.

A. Mr. R. M. Cobban.

Q. If you ever sold that land, to whom did you sell it? A. To R. M. Cobban.

Q. When did you make the deed to Mr. Cobban?

A. To the best of my recollection it was about six weeks or perhaps two months or maybe a month after I had made the final proof.

Q. You didn't make the deed on the same day that you made your final proof? A. No, sir.

Q. Did Mr. Cobban pay you any more money at that time?

Mr. BICKFORD.—Objected to; irrelevant and immaterial.

A. He paid me one hundred dollars—any more money than what?

Q. Well, did he pay you any money at all?

A. Yes, sir.

Q. How much money did he pay you altogether?

A. I think it was about one hundred and twenty-five or thirty dollars, something like that.

(Testimony of Charles B. Sperry.)

Q. When did he pay you this money?

A. I refuse to answer that question on the ground that I am indicted by the grand jury, and the answer might have a tendency to incriminate me. I will say this much, that I turned this land over to Mr. Cobban about two months or six weeks or something like that after I had filed on it, and that I received for it about one hundred and twenty-five dollars.

Q. Did you give Mr. Cobban any receipt for any money at any time, a written receipt?

A. I don't remember giving him a receipt; I gave Mr. Griswold a receipt.

Q. But you don't remember giving Mr. Cobban a receipt? A. I do not.

Q. Did you give Mr. Cobban a note for this four hundred dollars that he paid in for you at the land office?

A. No, sir.

Q. Did you give him any receipt for that?

A. No, sir, I don't think so.

Q. Was there ever any suggestion from Mr. Griswold or from Mr. Cobban, or from Mr. Griswold for Mr. Cobban that this money you were receiving was in the nature of a loan?

A. Well, I stated that in the first place— State the question again, please.

Q. This four hundred dollars that was paid in for you for this land, and the one hundred and twenty-five dollars that Mr. Cobban gave you, and the twenty-five or ten or fifteen dollars which Mr. Griswold gave you

(Testimony of Charles B. Sperry.)

when you came to make your filing, together with Mr. McConnell, I will ask you now if it was ever said between you and Mr. Cobban or between you and Mr. Griswold as the agent of Mr. Cobban, that that was to be a loan?

Mr. BICKFORD.—Objected to, first, because it is leading; second, because it calls for a declaration of a third party, and is therefore hearsay; third, because it is irrelevant and incompetent and immaterial.

A. I don't think it was ever mentioned what it was for; he simply gave me the money. I understood beforehand that they were loaning this money, as I said before, from outside parties, but whether they themselves said that to me, I don't know that they did.

Q. Now, Mr. Sperry, wasn't it the contract or agreement, if not in so many words, wasn't it fully understood between you and Mr. Griswold as agent for Mr. Cobban at the time you made your preliminary statement and at the time you made your final proof, that you were making this entry, not to have the land for your own use, but when your final proof was completed, in consideration of the sum of one hundred dollars, to convey to Mr. Cobban?

Mr. BICKFORD.—We object to that question, first, because it is leading; second, that it calls for a conclusion of the witness and not for a statement of fact; third, that it is irrelevant, incompetent and immaterial for any purpose.

(Testimony of Charles B. Sperry.)

A. I fail to see how an agreement can be made where there was no talk whatever between the parties. I had no talk with Mr. Griswold whatever in regard to this claim, the taking it, the disposition of it or anything of that kind.

Q. Did you have any talk with him about paying this four hundred dollars for you when you came to make your final proof? A. No, sir.

Q. No talk with anybody, it was all understood, was it?

Mr. BICKFORD.—Objected to, first, because it is leading; second, because it is calling for a conclusion of the witness; third, because it is irrelevant, immaterial and incompetent for any purpose.

A. I don't know what they understood.

Q. Let me see if I understand you. I understand that there was not any conversation or talk between you and Mr. Cobban or between you and Mr. Griswold, by reason of which Mr. Cobban ultimately paid the four hundred dollars for the entry you made and by reason of this he finally paid you approximately one hundred and twenty-five dollars, but that it just came about apparently as a matter of course. Is that right?

Mr. BICKFORD.—We move to strike out the statement of counsel for the reason that it is intended as a leading question to the witness, and because it calls for a conclusion of the witness and not for a statement of fact by the witness concerning any of these transactions.

Q. (Question read.)

(Testimony of Charles B. Sperry.)

Mr. BICKFORD.—Now, we ask that counsel be required to divide his question, so that it may be answered intelligently by the witness.

A. That is right.

Mr. ZEVELY.—You ought not to fix the measure of the intelligence of the witness.

The EXAMINER.—The witness can answer whether he understands or not.

The WITNESS.—I have forgotten the question now, again.

Mr. BICKFORD.—I am trying to obviate that difficulty; it is too complicated, I apprehend, to be answered by the witness.

The MASTER.—Put another question, Mr. Zevely; the witness does not appear to understand.

Mr. ZEVELY.—Read the question again; he has forgotten it; then if he cannot understand it I will put it differently.

Q. (Question read.)

A. I don't know what you call a matter of course.

Q. Well, without any apparent—there was no conversation about it, was there?

Mr. BICKFORD.—Objected to; leading.

A. He simply gave me the money, as I stated.

Q. What for? A. I didn't ask him.

Q. Did he tell you?

(Testimony of Charles B. Sperry.)

A. He gave me the money to prove up on this place and to pay for the filing and so on.

Q. What money was it that he gave you to do that with?

A. Well, the whole of it, except the hundred dollars and expenses.

Q. What was that hundred dollars for?

A. That was for my own individual self.

Q. But what I am asking you there, and what you don't seem to gather, was this—

Mr. WALSH.—He seems to apprehend quite clearly.

Q. Well, I will ask you further. There was not any conversation between you and Mr. Cobban, was there, by which he agreed to put up this four hundred dollars for you? A. No, sir, there was not.

Q. Never at all? A. No, sir.

Q. You don't know why, as a matter of fact, he wanted to put up this four hundred dollars for you?

A. Well, I have an idea, but I don't know.

Q. What is that idea?

Mr. BICKFORD.—We object to that; that is not a statement of fact; it is also leading.

A. Well, because he wanted me to have it.

Cross-examination.

(By Mr. WALSH.)

Q. Now, Mr. Sperry, you used to live up here on Canyon Creek, didn't you? A. No, sir.

(Testimony of Charles B. Sperry.)

Q. Where, then? A. On Seven Mile Creek.

Q. What business were you engaged in there?

A. Raising vegetables.

Q. That was in this county of Lewis & Clarke?

A. Yes, sir, about four miles from this city.

Q. How long did you live there?

A. Well, I didn't live there all the time. I have been in this vicinity, been living within ten miles of Helena for the last twenty years or about that.

Q. Where does your family live now?

A. They are living now on the Big Blackfoot River, Powell County.

Q. Now, I understood you to say that you went from the vicinity of Helena up into that neighborhood for the express purpose of taking up some land?

A. Yes, sir.

Q. But, as I understood you, not under the Timber and Stone Act?

A. Well, my idea was to take a piece of land, if I could get it, that had both timber and agricultural land on it, if I could get just what I wanted.

Q. As a homestead? A. Yes, sir.

Q. You had not then exercised your homestead right? A. No, sir.

Q. Did you finally find a piece of land subject to homestead entry? A. Not at that time.

Q. Have you since? A. Yes, sir.

Q. And you filed on some land up there as a homestead entry? A. Yes, sir.

(Testimony of Charles B. Sperry.)

Q. Is that the land on which you are now living?

A. Yes, sir.

Q. And you are living out the homestead with the expectation of acquiring title to it in that way?

A. Yes, sir.

Q. And that was what brought you into that neighborhood at that time? A. Yes, sir.

Q. And going into that neighborhood for that purpose, you learned that parties were taking up timber claims? A. Yes, sir.

Q. You had not, as I understand you, at that time any knowledge about the Timber and Stone Act, or the right to take claims under it?

A. No, sir, I did not.

Q. That was the first knowledge you had of that?

A. Yes, sir.

Q. And at the same time you heard, as I understood you, that Mr. Griswold, or he for someone else, would advance to anyone who wanted to take up timber claims that would be approved by him, the amount of money necessary to enable them to acquire title to the lands?

A. Yes, sir; I heard this from outside parties.

Q. Mr. Griswold didn't tell you so, but you had heard that? A. Yes, sir.

Q. Now, I understood you to say that it was some month or six weeks or such a matter as that after the time that you made final proof, that you made a conveyance of your land to Mr. Cobban? A. Yes, sir.

(Testimony of Charles B. Sperry.)

Q. Now, I would like to ask you what agreement or contract you had made with anybody prior to that time to the effect that you would convey this land to Mr. Cobban?

A. There was never anything said one way or the other whether I would convey it to anybody or dispose of it any manner.

Q. What have you to say as to whether you did or did not ever make any contract or agreement to that effect prior to the time that you conveyed this land to Mr. Cobban?

A. Well, prior to the time that I conveyed the land to him—it might have been a little while before; I don't know.

Q. I will ask you if you did prior to the time that you proved up? A. No, sir, I did not.

Q. Either directly or indirectly? A. No, sir.

Q. Now, as I understand you also, Mr. Sperry, at the time you heard about this matter, you heard also that Mr. Griswold or some other person for whom he was acting would furnish whatever money was necessary to take up the land, and would furnish it how, did you say?

A. Without interest or without security.

Q. Now, you understood, did you not, when you were getting this money, that it was being loaned to you for the purpose of taking up this land?

Mr. MAYNARD.—He did not get the money, and he has not so testified.

A. I didn't get the money directly.

(Testimony of Charles B. Sperry.)

Q. No, but it was paid for you? A. Yes, sir.

Q. And you understood that you were indebted to that man, Mr. Cobban, for whatever money was needed to take up the land? A. Yes, sir.

Q. And that if you eventually sold your land to him, why, that, of course, would be taken out of the amount for which your land was to be sold? A. Yes, sir.

Q. As I understand you also, you were told by these people who told you about this matter, that after you had made final proof, if you desired to sell to Mr. Cobban, he would buy your land from you and pay you one hundred dollars over and above what it cost you?

A. Yes, sir.

Q. Where did you go after you made your final proof here, to your home on the Blackfoot?

A. Yes, sir.

Q. And where did you see Mr. Cobban when you eventually conveyed the land to him?

A. Well, I don't like to answer that question; it is of an incriminating character.

Q. Have you been indicted by the grand jury?

A. Yes, sir.

Q. Is the indictment still pending against you?

A. Yes, sir.

Q. It has not been dismissed? A. No, sir.

Q. Mr. Sperry, I show you your sworn statement made in connection with your entry, cash entry No. 6216. You recognize that as your sworn statement, do you?

(Testimony of Charles B. Sperry.)

A. I haven't read this over; do you want me to read it over?

Q. Yes, just look it over and then tell me if this is your sworn statement made at the time you made the entry? A. Yes, sir.

Q. And in this you swear as follows: "That I do not offer to purchase the land hereby described for speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was true, was it?

A. Yes, sir, it was.

Q. I show you also your testimony given upon your final proof, Mr. Sperry, and ask you to look it over.

A. What do you want to know about this?

Q. Now, in this, Mr. Sperry, you were asked this question: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?" To which you answered: "No, sir." That was true, was it not?

A. Yes, sir.

(Testimony of Charles B. Sperry.)

Whereupon a recess was taken until 2 P. M.

CHARLES B. SPERRY.

Subscribed and sworn to before me this 19th day of December, A. D. 1901.

HENRY N. BLAKE,
Examiner in Chancery.

OLIVER E. MUCHMORE, a witness called on behalf of the complainant, after having been duly sworn by the examiner, testified as follows:

(By Mr. MAYNARD.)

Q. What is your first name?

A. Oliver. Oliver E. Muchmore.

Q. Where do you live? A. Ovando, Montana.

Q. How old are you?

A. Thirty-four years old.

Q. How long have you lived at or near Ovando?

A. On and off about twelve years.

Q. What did—what do you do for a living?

A. Various kinds of work.

Q. A laborer?

A. Laborer, yes, sir; sometimes take contract work, freighting; sometimes farming, and work by the day.

Q. What is your wife's name?

A. Elizabeth A. Muchmore.

Q. Elizabeth A. Muchmore? A. Yes, sir.

Q. Did you, Mr. Muchmore, and your wife, make entries under the Stone and Timber Act? A. Yes, sir.

Q. On what sections were those entries made?

(Testimony of Oliver E. Muchmore.)

A. In township 12, west 15—north of range 15 west.

Q. What section is your land on?

A. My land is on section 12.

Q. And what section is your wife's on?

A. On section 14.

Q. Did you have any money to pay your own or your wife's—did either of you have any money with which to make the payments on these land entries?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial.

A. No, sir.

Q. Did not? A. No, sir.

Q. For what purpose did you make the entry of this land that you have testified to?

A. For what purpose?

Q. Yes. A. For the purpose of proving up on it.

Q. For what?

A. For the purpose of proving up on it and selling it.

Q. And to sell it? A. Yes, sir.

Q. From whom did you receive the money to make the payments on it? A. I got it from Mr. Faust.

Q. Is he a member of the firm of Jackway and Faust?

A. Yes, sir.

Q. How much did you receive from him?

A. The first time I think I got about forty or forty-five dollars apiece to come over here. I got about ninety dollars the first time to come over here.

Q. You got about ninety dollars? A. Yes, sir.

Q. From him? A. Yes, sir.

(Testimony of Oliver E. Muchmore.)

Q. For what purpose?

A. To come over here, and to pay my expenses coming over here and filing on the land; for advertising and so on and so forth, whatever the expenses required.

Q. Who came with you and your wife when you came over here?

A. Albert F. Muchmore, Guy W. Muchmore, H. C. McNally, and my wife and myself.

Q. Who are those persons?

A. Guy W. Muchmore and Albert F. Muchmore are nephews of mine, and H. C. McNally—they are ranchers there; had a farm at Ovando.

Q. Did they come over to file too? A. Yes, sir.

Q. Where do they live? A. Live at Ovando.

Q. How old are they, in your best judgment?

A. Guy is about twenty-three, and is probably in his twenty-fourth year, and the other is about two years older, about twenty-six years old. I don't know how old Mr. McNally is. I guess he is fifty years old. And my wife is about twenty-seven.

Q. What is that?

A. My wife is about twenty-seven.

Q. Your wife is twenty-seven? A. Yes, sir.

Q. Did your wife have any money at all, sufficient to make any payment on her entry?

By Mr. WALSH.—We object to that as being leading, and irrelevant and immaterial.

A. No, sir.

(Testimony of Oliver E. Muchmore.)

Q. You say she did not? A. No, sir.

Q. Do I understand you that the entire party that came over here made their entries here?

A. Made any entries?

Q. That is, the parties that came with you, did they also make filings?

By Mr. WALSH.—We object to that for the reason it is not the best evidence of the fact sought to be proven by the witness.

A. Yes, sir.

Q. When you came over at the expiration of the legal limit, to make your final proofs, did you have the money with you?

By Mr. BICKFORD.—We object to that as being leading.

A. With me when I came?

Q. Yes.

A. I didn't have any money, I had a check.

Q. Had a check?

A. Yes, sir, for the required amount.

Q. How much was the amount of that check?

By Mr. BICKFORD.—To which question we object, for the reason that the check is the best evidence.

A. Well, there was twelve hundred dollars in the check; four hundred was mine.

Q. Whose check was it?

A. Check of Jackway and Faust.

Q. For what purpose, and with what arrangement or

(Testimony of Oliver E. Muchmore.)

understanding between you and them, did they give you this money?

By Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and as calling for a conclusion from the witness.

A. For what purpose did they give it to me?

Q. Yes, sir.

A. So that I could make my final entry, prove up on the land, so that I could sell it.

Q. Sell it to them? A. No, not to them.

Q. Well, to whom?

A. Well, there was nothing said as to who I was to sell it to; I knew I could sell it to Mr. Cobban; they said I could sell it to Mr. Cobban.

By Mr. WALSH.—We move to strike out the answer of the witness, for the reason it is not responsive to the question, and for the further reason it is irrelevant and immaterial to any of the issues in this case.

Q. When you came over here with this twelve hundred dollars of their money, to make the final proof, you did it with the expectation of selling the land to Mr. Cobban?

By Mr. WALSH.—We object to that as being leading.

A. Yes, sir, I did.

Q. And how much were you to receive from Mr. Cobban?

By Mr. BICKFORD.—We object to that as being leading, and further as calling for a conclusion from the witness, and not for testimony concerning any fact or any

(Testimony of Oliver E. Muchmore.)

conversation had with any person, but the witness is asked to draw his own deductions or conclusions from some transactions theretofore had with someone or other than the defendant in this case.

A. Well, there was nothing said as to what I was to receive from him at the time.

Q. At the time? A. No.

Q. You understood that you were to receive one hundred dollars?

By Mr. BICKFORD.—We object to that as being leading, and further upon the ground that what he understood about the matter is not competent evidence, and is calling for the conclusion of the witness, and not testimony of any fact.

Q. Is that not a fact?

By Mr. BICKFORD.—We object to that as being leading, and further upon the ground that what he understood about the matter is not competent evidence, and is calling for the conclusion of the witness, and not testimony of any fact.

A. Mr. Faust told me—

By Mr. WALSH.—We object to what Mr. Faust told him, for the reason that it is hearsay.

Q. Go on and state, they have the privilege of making the objection, and you have the privilege of answering the question.

A. Mr. Griswold was up there in the first place, and told Mr. Faust he was the agent for Mr. Cobban, and

(Testimony of Oliver E. Muchmore.)

if anybody wanted to take up a timber claim and sell it to Mr. Cobban, could do so and get—

Q. And get how much?

A. Well, Griswold told Faust that we could get a hundred dollars, and Faust said perhaps a dollar a thousand for all there was over five hundred thousand feet of lumber.

Q. And that was what led you to make this entry?

By Mr. BICKFORD.—We object to the question, for the reason that it is irrelevant and immaterial, and upon the further ground that it is leading.

A. Yes, sir.

Q. And, as a matter of fact, you did afterward convey to Mr. Cobban? A. I did.

Q. And how much did you receive from him?

A. A hundred dollars over and above my expenses.

Q. A hundred dollars over and above your expenses?

A. Yes, sir.

Q. And did your wife receive the same amount?

By Mr. BICKFORD.—We object to that for the reason that it is leading, and upon the further ground that it is irrelevant and immaterial to the issues in this case.

A. Yes, sir.

Q. You both received the money and transferred the land to him? A. Yes, sir.

(Testimony of Oliver E. Muchmore.)

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Muchmore, did you hear Mr. Griswold say these things to Mr. Faust? A. No, sir.

Q. You were not present at the time?

A. No, sir.

Q. Of course, what Mr. Griswold told Mr. Faust you know only by hearsay.

A. Only what Mr. Faust told me.

By Mr. WALSH.—We move to strike out the answer of the witness, upon the ground that it is hearsay testimony.

Q. And what Mr. Faust told you was, that, after you proved up you would be able to sell this land to Mr. Cobban for a hundred dollars over and above what you put into it, and perhaps something besides?

A. That is what he told me, yes, sir.

Q. Well, now, did you make any contract or agreement before you made your filing, to the effect that you would convey this land to Mr. Cobban, or anybody else, before you made final proof?

A. No, he didn't say I would have to sell it; he said I could sell it; he said I could sell it to Mr. Cobban.

Q. Well, now, I will repeat the question. Did you make any contract or agree before you made your filing, to the effect that you would convey this land to Mr. Cobban, or to anybody else, before you made the final proof?

A. No, sir, I didn't make any agreement.

(Testimony of Oliver E. Muchmore.)

Q. As I understood you, then, Mr. Muchmore, prior to the time that you made your final proof you had never agreed with anybody that you would sell them this land?

A. No, I never did agree, no. I had made no written agreement or anything of that kind at all.

By Mr. MAYNARD.—Wasn't signed, sealed and delivered, in other words.

Q. Mr. Muchmore, I wasn't asking you about any written agreement. I want to know if there was any verbal agreement that you made, any verbal agreement that you made, any verbal agreement you would convey this land? A. No.

Q. And you certainly didn't make any written agreement, did you? A. No, sir.

Q. You remember, I suppose, when you made your filing, of swearing to an affidavit, in substance the same as this blank that I now hand you? A. Yes, sir.

Q. In this affidavit, Mr. Muchmore—

By Mr. MAYNARD.—That is a blank form that you have there, isn't it?

By Mr. WALSH.—Yes, sir.

By Mr. MAYNARD.—I object to the witness being cross-examined on any blank form.

By Mr. WALSH.—Well, we will have to suspend and get Mr. Greene.

Q. I want to ask you if you didn't make this—

Mr. MAYNARD.—Well, it would be much more satis-

(Testimony of Oliver E. Muchmore.)

factory to have the witness testify from the affidavit that he did make.

Q. Were you a witness for any of these other people, Mr. Mr. Muchmore?

A. I don't know that I was; I couldn't say positive. I may have been advertised as a witness, but I don't think that I acted as a witness in making the final proof.

Q. Now, Mr. Muchmore, you had a talk with Mr. Faust concerning the conditions under which he was to let you have this money for the purpose of making these entries, did you not?

A. Well, I didn't have much of any talks about it. I asked him if I could get it; I told him I didn't have the money, and I asked him if he would help me, and he said he would.

Q. That he would help you? A. Yes, sir.

Q. Well, now, you rendered an account to him, did you not, about how you had expended this forty or fifty dollars—that you had expended in the first place?

A. No, I don't believe I did. I told him I wanted the money to file on the land, and he gave it to me over the counter. There was a piece of paper; there was a memorandum on a piece of paper which he handed me to sign. It showed that I had borrowed this money.

Q. Did you sign that paper?

A. Yes, because he said he wanted it so that in case of death or anything of that kind, he could show that I had got the money.

Q. And when you got the twelve hundred dollars, you signed a memorandum, did you, to that effect?

(Testimony of Oliver E. Muchmore.)

A. Yes, that is my recollection.

Q. Yes, but that was at the time you got the first money? A. Yes, sir.

Q. —a note in substance, or something to that effect, which showed that you had borrowed the money?

A. Yes, sir.

Q. You understood it that way?

A. Yes, sir, that is what he said, he wanted it to show in case of death or anything of that kind, so that he would have it to show that I got the money.

Q. Of course, you understood that after you had subsequently conveyed this land to Mr. Cobban, or anyone, at the direction of Mr. Faust, then this money that he had loaned you was to be taken out of the purchase price? A. Well, yes.

Q. You were to pay it back out of the money?

A. Yes, sir.

Q. Now, you subsequently made this arrangement, did you not, to transfer the land? A. With Faust?

Q. Yes.

A. I don't know whether there was anything said about transferring the land or not. I took it up with the understanding that I was to sell it to Mr. Cobban, if I wanted to, and that is what I took it up for, to sell it. Mr. Faust knew that I was taking it up to sell it.

Q. Perhaps you don't understand the question, Mr. Muchmore. You did subsequently execute a deed of the land to Mr. Cobban.

A. After I had made my final trip, yes, sir.

(Testimony of Oliver E. Muchmore.)

Q. Where were you when you made this deed?

A. When I acknowledged the deed, it was in Mr. Faust's store.

Q. And you balanced up the account at that time, didn't you?

A. No, sir, not right at that time.

Q. Well, how long afterward did you?

A. Well, I couldn't say; I don't exactly understand the question. Fix up an account with Mr. Faust?

Q. Yes, with Mr. Faust.

A. Well, I will have to go back there a bit. I went to Missoula to see Mr. Cobban.

Q. When did you go to Missoula to see Mr. Cobban?

A. Before I had the deed drawn up.

Q. And after you had made your final proof?

A. After I had made my final proof.

Q. And you arranged with Mr. Cobban with reference to the terms? A. Yes, sir.

Q. And he told you how much he would give you for the land? A. Yes, sir.

Q. Was that the first time you had seen Mr. Cobban about this matter? A. Yes, sir.

Q. As I understand you, Mr. Muchmore, you knew at the time you took up this land, that if you wanted to sell it to Mr. Cobban after you had made your final proof, you could do so? A. Yes, sir.

Q. And you knew that if you wanted to sell it to Mr. Cobban after you had made final proof, that he would pay you a hundred dollars over and above what it had

(Testimony of Oliver E. Muchmore.)

cost you, and in addition to that you might be able to get something further.

A. Yes, if there was over five hundred thousand feet of timber on my individual claim, I knew that I could get from him a hundred dollars.

Q. But, as I understood you, you didn't bind yourself to convey to Mr. Cobban?

A. No I had no papers, no, sir.

Q. Nor by any verbal agreement, did you?

A. No, I didn't see Mr. Cobban.

By Mr. MAYNARD.—He said he didn't see Mr. Cobban, but he did see Mr. Jackway and Faust.

By Mr. WALSH.—Did he say so?

Q. I will aid your recollection now, Mr. Muchmore, with the original sworn statement. (Counsel hands paper to witness.)

A. That is not right; there is a misunderstanding in my age. I gave my age in as thirty-two.

Q. That is a mistake, is it? It is thirty-three and you gave it in as thirty-two; is that the mistake?

A. Yes, sir, I am only thirty-four now.

Q. All right, read the rest of it. A. Yes, sir.

Q. Now, Mr. Muchmore, in this you seem to have sworn as follows: "I do not apply to purchase the land above described on speculation, but in good faith, to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title

(Testimony of Oliver E. Muchmore.)

I may acquire from the Government of the United States map inure in whole or in part to the benefit of any person except myself." That statement is true, is it not?

A. Where is that down here?

Q. I read from here, Mr. Muchmore, "I do not apply to purchase the land above described."

(Affidavit made by the witness at the time he made his sworn statement, is shown to the witness.)

A. Yes, I signed that, all right.

Q. Well, that was true, was it not? A. No, sir.

Q. Well, what was wrong about it?

A. I took it up for speculation purposes.

Q. That is, you took it up with the expectation of filing on it and selling it? A. Yes, sir.

Q. Other than that, there was nothing that was not true?

A. Well, I took it up for speculation purposes, to sell it. I didn't make any contract to sell it, but I took it up for speculation purposes.

Q. That is, you took it up intending to sell it?

A. Yes, sir.

Q. That is to say, you didn't intend to build a sawmill up there and cut the timber down and saw it into logs.

A. No, sir.

Q. But you intended to acquire the timber on the land? A. Yes, sir.

Q. And then afterward you intended to sell it?

A. Yes, sir.

(Testimony of Oliver E. Muchmore.)

Q. Other than that you don't see anything in the affidavit that wasn't absolutely true?

A. Yes, but I wasn't that old then.

Q. Your conscience needn't be troubling you about the other matter, the matter of your age, Mr. Muchmore. Now, didn't you make final proof, and upon the making of final proof, Mr. Muchmore, it appears that you gave this testimony. Just look it over.

(Counsel hands witness original testimony given on final proof.)

A. This is correct here, I guess.

Q. Now, in that connection, Mr. Muchmore, you were asked, "Have you sold or transferred your claim to this land since making your sworn statement, or have you, directly or directly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?" to which your answered, "No, sir, I have not." A. Yes, sir.

Q. That was correct, was it not?

A. Well, in one sense it was, and in another sense, it was not. I hadn't made any agreement to sell it up to that time.

Q. You hadn't made any agreement to sell it up to that time? A. No, sir.

Q. Do you find anything else in the statement now that seems to you to be of doubtful truth? I am speaking only of this question 13?

(Testimony of Oliver E. Muchmore.)

A. I don't seem to really understand that.

Q. You don't seem to really understand that?

A. No, sir, I do not.

Q. You understand thoroughly that part which reads, "Have you directly or indirectly made any agreement or contract with any person whomsoever"?

A. No, I hadn't agreed to transfer it at that time; hadn't agreed with anybody.

Q. I may be able to help you, Mr. Muchmore, if you will indicate to me what part it is that you don't quite clearly understand.

(Counsel returns paper to the witness.)

Q. Is there any portion of the question that you don't thoroughly understand, Mr. Muchmore?

A. Yes, sir, I don't understand it at all.

Q. At least you understand that part of it which—

A. I don't clearly understand the whole thing.

Q. But you understand that part of it which asks if you have made any agreement or contract with any person whomsoever? A. Yes, sir.

Q. You said you hadn't done that?

A. No, sir, I hadn't made any contract with anybody at that time to sell the land.

Redirect Examination.

(By Mr. MAYNARD.)

Now, as I understand you in the cross-examination, Mr. Muchmore, you say that so much of this affidavit, that you made when you made your filing, which reads,

(Testimony of Oliver E. Muchmore.)

"I do not apply to purchase the land above described on speculation," isn't true? A. Yes, sir. —

Q. That, as a matter of fact, at that time, when you made that filing, you did make it for the purpose of speculation?

By Mr. BICKFORD.—We object to the question as being leading.

A. I did.

Q. Solely for that purpose?

Mr. BICKFORD.—We object to the question as being leading.

A. Yes, sir.

Q. And that the only purpose that you had in coming over here to Helena with your wife, and making these filings, and taking up these locations was for what money you could get out of the land in selling it, after you had made your final proofs?

By Mr. BICKFORD.—We object to the question as being leading.

A. Yes, sir.

Q. Mr. Griswold, previous to your coming here, had told you that Mr. Cobban would pay you a hundred dollars over and above your expenses?

By Mr. BICKFORD.—We object to the question as being leading.

A. No, sir.

Q. Well, who did tell you? A. Mr. Faust.

Q. Mr. Faust told you?

(Testimony of Oliver E. Muchmore.)

A. Yes, sir, that is what Mr. Griswold told him.

Q. And he told you what Mr. Griswold had told him?

By Mr. WALSH.—We object, for the reason that the testimony called for is hearsay, and we therefore move to strike out the testimony of the witness, as to what Mr. Griswold told Mr. Faust, and as to what Mr. Faust told him Mr. Griswold had said.

A. Yes, sir.

Q. Mr. Faust is a member of this firm of Jackway and Faust? A. Yes, sir.

Q. And he gave you—to come over here and file, and gave you money to pay your expenses?

By Mr. BICKFORD.—We object to that for the reason that it is leading.

A. He did.

Q. And also gave you the money to make your final proofs, and gave you this money to pay your expenses?

By Mr. BICKFORD.—We object to that for the reason that it is leading.

A. Yes, sir.

Q. And with this money that he had given you, you made this payment? A. Yes, sir.

Q. And the money he gave you to pay the expenses of filing, and so forth? A. Yes, sir.

By Mr. BICKFORD.—That is objected to for the reason it is leading.

Q. And thereafter you conveyed the land to Mr.

(Testimony of Oliver E. Muchmore.)

Cobban for that same amount, one hundred dollars, besides your expenses?

By Mr. BICKFORD.—We object to that for the reason it is leading.

A. Yes, sir.

Q. Is that true? A. Yes, sir.

(Witness excused.)

(Sig.) OLIVER E. MUCHMORE.

Subscribed and sworn to before me this 19 day of Dec. A. D. 1901.

HENRY N. BLAKE,
Examiner in Chancery.

(Adjournment taken until ten o'clock A. M., Thursday, December 18th, 1901.)

ELMER E. HERSHEY, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your name?

A. Elmer E. Hershey.

Q. How old are you?

A. I will be forty years old next April.

Q. Where do you live?

A. Missoula, Montana.

Q. How long have you lived there?

A. I have lived at Missoula since the fall of 1899; I have in and about the place, though, since 1886. I was in the Bitterroot valley prior to that time.

(Testimony of Elmer E. Hershey.)

Q. How long have you lived in Montana?

A. Since 1886.

Q. Are you a married man? A. I am.

Q. What was your wife's maiden name?

A. Catlin; she is a daughter of John B. Catlin.

Q. Who was indicted by the grand jury for subornation of perjury?

Mr. WALSH.—We object to that as not a proper means of identifying the father in law of the witness, even if were material, and we object that it is not material.

A. I believe so.

Q. Are you an attorney at law? A. I am.

Q. How long have you been admitted to practice?

A. I was admitted to practice in the supreme court of the State in 1891; I was admitted to practice before the District and Circuit Court of the United States in 1896 or 1897?

Q. Are you practicing your profession now?

A. Well, no, I am not in active practice. I have acted as counsel in some matters at times when I could conveniently do so without taking up my time from the office. I have endeavored, since I have been in the office, to keep up and abreast of the times so that I would not go back in knowledge of law, and have only taken hold of a few matters—some old matters that I had left over when I went in the office, and a few new matters. I have always refused to go into the court, because it would take up my time.

(Testimony of Elmer E. Hershey.)

Q. You say office, what do you mean by that?

A. I don't know as I catch your meaning.

Q. You say—you used the word "office" in your testimony; what office do you hold?

A. Oh, I am the register of the United States land office at Missoula, Montana.

Q. When were you appointed?

A. I can't give you the date that I was appointed; I went into the office on the 6th day of August, 1898, and took charge.

Q. And have you been continuously in the discharge of the duties of your office since? A. Yes, sir.

Q. It was during this time, then, that you were one of the attorneys for Mr. Cobban in the suit that was brought against him by Mr. Griswold in the Missoula District Court?

Mr. WALSH.—That is objected to as entirely irrelevant and immaterial.

A. I was in that case as an attorney of record. The suit, as I remember it, was brought some time in December about a year ago. As I stated before, I didn't make a practice of going into the District Court or acting as attorney in any case that would take me out of the office. I had acted as counsel for Cobban and Dinsmore in the Orchard Homes proposition, they had dissolved partnership that fall, and I understood that my connection with the firm, of course, had ceased with that. Mr. Dinsmore did not re-employ me. About that time Mr. Cobban came to me and said that he had

(Testimony of Elmer E. Hershey.)

formed a partnership with Mr. E. B. Howell of Butte, an attorney, who would look after his legal business, but it would be some time before he moved to Missoula, and he requested me to act for Mr. Howell in this suit, and I served papers and filed them for Mr. Howell; Mr. Howell drew them up. That is the total of my connection with that suit, and I have not received a cent of pay. It was more an accommodation to Mr. Howell than anything else that I was connected with the suit, although I will say that if it had not been one that would take me out of the office at that time, I saw no reason why I could not be an attorney in that suit at the time it was commenced.

Q. Do I understand you to say that you did not enter your appearance regularly as one of the attorneys?

A. Yes, sir, I said that I was regularly entered, and am an attorney of record in that case, but I have explained how I became an attorney of record, more as an accommodation to Mr. Howell. I think the first papers Mr. Howell signed my name to himself; I think that is the way I got of record. I don't think I signed it myself. After that I think I signed one paper myself as an attorney, and I think I acknowledged receipt of service of papers upon me as an attorney in the case.

Q. How long did you continue to act as one of the attorneys for Mr. Cobban in this suit?

A. Only until Mr. Howell could come to Missoula. He was delayed about moving down longer than he expected to be, at least he told me so, and it got along

(Testimony of Elmer E. Hershey.)

where the issues were being made up, and required an attorney to go into the District Court, and I notified Mr. Cobban that I could not go into the court, and that, if Mr. Howell would not come to Missoula, he would have to get other counsel, and he did so.

Q. When was that?

A. I couldn't say; it was quite early in the case; I really couldn't say. Messrs. Marshall & Stiff were entered as attorneys of record; just guessing at it, I should say it was some time in March, the early part of March.

Q. And the suit was settled in June?

A. I really don't know when the suit was settled; I was not connected with the case in any shape or form after Marshall & Stiff went in, and have no knowledge of when the case was settled.

Q. Haven't you a general knowledge; didn't you hear of the fact?

A. Not until sometime afterwards; it must have been—well, I really don't know—it was a long time before I even found that there was any settlement. At the time the rumor on the street was that it was simply dismissed.

Q. What does your office force consist of?

A. At the present time of two clerks and the register and receiver.

Q. Who are the two clerks?

A. Lind S. Catlin and Charles E. Avery.

Q. What relation is Lind Catlin to you?

(Testimony of Elmer E. Hershey.)

A. He is a cousin of my wife.

Q. How long has he been in your employ?

A. He went in the office, I think, about the month of August, 1899.

Q. What is his official position?

A. He is at present chief clerk.

Q. What was it in 1899?

A. He was simply a clerk in the office; we only had one clerk at that time.

Q. Who was he? A. He was the one.

Q. How long had he been clerk?

A. He commenced—

Q. I mean previous to August, 1899.

A. He had not been clerk; that was the first time he went into the office.

Q. And was the only clerk?

A. Was the only clerk.

Q. So that you and the receiver and Mr. Catlin were the office force?

A. Were the office force at that time, yes, sir, up to, I think, about the 1st of September, 1900.

Q. Why was it that you engaged the services of Mr. Catlin in August, 1899?

A. It seems to me, as I said before, that it was about the middle of August; I am not sure at to the date.

Q. Why was it that you engaged his services?

A. Why, we were authorized to do so by the Department.

(Testimony of Elmer E. Hershey.)

Q. Had you had a clerk before that at all?

A. We had a clerk, whose services terminated on the 30th day of June.

Q. You have been in attendance during the hearing of this matter, have you not?

A. Yes, sir, part of the hearing.

Q. You have in your custody and possession certain papers belonging to your office, have you not?

A. I have.

Q. That have been used at times during this hearing?

A. Yes, sir.

Q. Please name the papers; what papers are they?

A. Well, I have all the papers that were returned to us by the commissioner of the general land office; there are forty-seven timber and stone cases and one commuted homestead case. They run—entries that were made from June 24th, 1899, to December 15th, 1899; that is, the first one is dated on the first day and the last one is dated on the last day I named.

Q. And all that you have are between those two dates? A. Including those two dates.

Q. Are they on blanks furnished by the Department?

A. They are.

Q. And the same were used in each case?

A. Yes, with the exception, possibly, of three or four or five entries; there are some additional papers among those that are not used in each case.

Q. What is the first in date?

(Testimony of Elmer E. Hershey.)

A. The commuted homestead entry is the first in date.

Q. Is that under the Stone and Timber Act?

A. No, sir.

Q. I had reference to the entries that were made under the Stone and Timber Act? A. June 1st.

Q. Please state that; describe that paper; whose entry was it?

A. Oscar Muckenhirn; he made the timber and stone sworn statement June 1st, 1899.

Q. Now, I wish you would, in that case, give the dates of the taking of the different steps in that case; now, proceed; I want them in their chronological order, and the same question put as to each one; the first one is the name of the claimant and the date of the first filing.

A. I don't know as I quite understand. You don't want me to read this?

Q. No, I don't want you to read it.

Mr. ZEVELY.—Pardon me, and I will put the question.

(By Mr. ZEVELY.)

Q. I want you to state, Mr. Hershay, the name of the person making the sworn statement there, and its date, the description of the land filed upon; then the date of the final proof, the names of the witnesses, and to whom the final receipt has been delivered, if you know.

(Testimony of Elmer E. Hershey.)

A. Well, I will say that I don't know anything about those.

Mr. BICKFORD.—At this point we desire to interpose this objection: that the testimony called for from the witness is not responsive to any issue raised by the pleadings in the case. That it is alleged upon the part of the plaintiff that certain land entries were made at certain times and in certain land offices of the United States within the State of Montana, more particularly the land offices at Missoula and at Helena, Montana; that the allegations contained in the complaint with reference to these land entries are not denied by the defendant, and therefore that the evidence sought to be introduced is irrelevant and immaterial. Also, that the papers themselves and the contents of the papers would be the best evidence of the facts sought to be adduced.

A. Oscar Muckenhirn made timber and stone sworn statement June 1st, 1899, covering the south half of the southwest quarter, the northeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section two, township fifteen north, range fifteen west.

Q. What is the number of that sworn statement?

A. It is No. 250. He made final proof on August 12th, 1899; witnesses, C. L. Griswold and Stephen Tepper.

(Testimony of Elmer E. Hershey.)

(By Mr. MAYNARD.)

Q. I wish further that you would name the paper in which the publication was made, and the witnesses.

A. The notice was published in the Missoulian, and all of the witnesses named were Stephen Tepper, John Gilles, C. L. Griswold and R. M. Cobban. The testimony was taken before William Q. Ranft, receiver, and on the same date the receipt and final certificate were issued.

Q. To whom?

A. To the party; that is all I can say—to the party or his attorney; I don't anything about it; if he had an attorney in the case it would be delivered to the attorney. The patent was transmitted to our office January 24th, 1900.

(By Mr. ZEVELY.)

Q. Do you know to whom that patent was delivered?

A. I will answer the same way, to the party or his attorney, or whoever was the owner of the land—whoever had the receipt.

Q. You have no means of telling that?

A. No, sir. There is a patent book to show to whom it was delivered, but I did not bring that.

(By Mr. MAYNARD.)

Q. We will produce that later.

A. Yes, sir. If you could get a transcript from it—I would say that it is a pretty big book to carry up here; it is one of the biggest books we have got in the office. Stephen Tepper, June 24th, 1899, made timber and

(Testimony of Elmer E. Hershey.)

stone sworn statement No. 257 for the west half of the northwest quarter of section twenty, township sixteen north, range fifteen west. Final proof was made—

Q. The printing comes next, don't it, before the final proof?

A. Well, I have got that. Final proof was made September 2d, 1899; notice was published in the "Missoulian"; John Gilles, C. L. Griswold, Thomas Bryan and A. J. Griswold were named as witnesses. On the date fixed A. J. Griswold and Thomas Bryan appeared as witnesses; testimony was taken before William Q. Ranft, receiver. Receipt and final certificate was issued on the same day. There is no use giving that, because receipt and final certificate is always issued on that day.

Q. Now, you have a date when patent was transmitted?

A. Patent was transmitted to our office August 7th, 1900.

Harriet Bryan made timber and stone sworn statement No. 259, June 27th, 1899, for the south half of the southeast quarter and the south half of the southwest quarter of section twenty-six, township fifteen north, range fifteen west. Notice of publication was published in the "Missoulian," and C. L. Griswold, Thomas B. Bryan, Leliah P. Bryan and Edgar Lehman were named as witnesses. Final proof was made on September 4th, 1899, before William Q. Ranft, receiver; Edgar Lehman and C. L. Griswold appeared as wit-

(Testimony of Elmer E. Hershey.)

nesses, and on the same date receipt and final certificate were issued. Patent was transmitted August 7th, 1900.

Clara Belle Michaels made timber and stone sworn statement No. 266, on June 30th, 1899, for the southeast quarter of section thirty-two, township fourteen north, range sixteen west. Notice was published in the "Missoulian," and C. L. Griswold, Mike McNamara, M. Stairs and Arnold Michaels were named as witnesses. On September 9th, 1899, final proof was taken before William Q. Ranft, receiver, with M. Stairs and Mike McNamara as witnesses, and on the same day final certificate and receipt were issued. With our monthly returns the paper was transmitted to the Department at Washington, and by letter C. of July 28th, 1900, the timber and stone sworn statement was canceled as to the east half of the southeast quarter by E. W. W., and patent was issued for the remainder of the land October 12th, 1900.

Q. Let me ask for information; do you not know to whom the initials E. W. W. refers?

A. A clerk in division C, at Washington, D. C.

Arnold Michaels made timber and stone sworn statement No. 258, on June 26th, 1899, for the northwest quarter of section eight, township fourteen north, range sixteen west. Notice was published in the "Missoulian," and Mike McNamara, M. Stairs, C. L. Griswold and John Ringuett were named as witnesses. Final proof was taken by William Q. Ranft, receiver, on September 9th,

(Testimony of Elmer E. Hershey.)

1899; M. Stairs and Mike McNamara were witnesses; on the same day final certificate and receipt were issued, and on August 7th, 1900, patent was transmitted to our office.

On July 15th, 1899, Jacob F. Jemison made timber and stone sworn statement No. 269, for the northwest quarter of section ten, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and John Gilles, C. L. Griswold, Albert Jemison and Benjamin Bryan were named as witnesses. On September 22d, 1899, final proof was taken; the testimony of Albert and Jacob F. Jemison was taken before Mr. Ranft, and C. L. Griswold's testimony was taken before me, and on the same day final certificate and receipt were issued. August 7th, 1900, patent was transmitted to our office.

July 15th, 1899, Albert Jemison made timber and stone sworn statement No. 268, for the southwest quarter of section ten, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and Benjamin Bryan, C. L. Griswold, John Gilles and Jacob F. Jemison were named as witnesses. On September 22d, 1899, final proof was taken—I took the testimony of C. L. Griswold, and the other two swore before William Q. Ranft; Jacob F. Jemison and C. L. Griswold were the witnesses. Patent was transmitted to our office August 7th, 1900.

July 26th, 1899, Recy M. Jemison made timber and stone sworn statement No. 276, for the south half of the

(Testimony of Elmer E. Hershey.)

southwest quarter and thesouth half of the southeast quarter of section six, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and George P. Jemison, William Eddy, J. C. Gilman and Albert Jemison were named as witnesses. Final proof was taken on September 29th, 1899, before me, and William Eddy and J. C. Gilman were witnesses, and on the same day final certificate and receipt were issued. Patent was transmitted to our office August 7th, 1900.

July 26th, 1899, Lavinia I. Gilman made sworn statement No. 275, for the east half of the northeast quarter, the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section eight, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and J. C. Gilman, George P. Jemison, Calvin Yarger and William Eddy were named as witnesses. On September 29th, 1899, final proof was taken, and George P. Jemison and William Eddy appeared as witnesses, and on the same day final certificate and receipt were issued. Patent was transmitted to our office August 7th, 1900.

Mr. BICKFORD.—If your Honor please, we are informed that a couple of witnesses are about to depart from town, and we desire to recall them for the purpose of asking a question or two before they go. This application is made for the purpose of saving time and expense. Those witnesses are Mr. Bryan and Mr. Albert Jemison.

(Testimony of Elmer E. Hershey.)

Mr. WALSH.—This testimony, gentlemen, is really a part of the testimony for the defense, but we would like to take it now to save the necessity of calling these gentlemen back when we are putting in our testimony.

The EXAMINER.—I wish you had spoken about it ten minutes ago, for they were both here. I will send after them. They want to go away. If we can get them we can hold a little longer so as to get through with them.

Mr. BICKFORD.—It won't take more than two minutes.

The EXAMINER.—Very well. We can let them go this afternoon, except that, if the defendant wants their testimony, we might have to keep them a day or so to sign their testimony or you might stipulate that if I find the transcript correct, it will be all right.

The WITNESS.—July 26th, 1899, Joshua C. Gilman made sworn statement No. 274, for the west half of the southwest quarter, the northeast quarter of the southwest quarter and the southwest quarter of the northwest quarter of section four, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and George P. Jemison, William Eddy, Calvin Yarger and Albert Jemison were named as witnesses. On September 29th, 1899, final proof was taken before William Q. Ranft, receiver, and William Eddy and George P. Jemison were witnesses; on the same day the

(Testimony of Elmer E. Hershey.)

final certificate and receipt were issued. Patent was transmitted to our office August 7th, 1900.

July 26th, 1899, George P. Jemison made sworn statement No. 273, for the southeast quarter of section four, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and J. C. Gilman, William Eddy, Albert Jemison and Recy Jemison were named as witnesses. On September 29, 1899, final proof was taken before William Q. Ranft, receiver; William Eddy and J. C. Gilman were witnesses; on the same date final receipt and certificate were issued. Patent was transmitted to our office August 7th, 1900.

July 25th, 1899, William J. Eddy made sworn statement No. 272, for the south half of the southeast quarter and the south half of the southwest quarter of section eight, township fourteen north, range fifteen west. Notice was published in the "Missoulian," and George P. Jemison, J. C. Gilman, Recy Jemison and C. L. Griswold were named as witnesses. On September 29th, 1899, final proof was taken before William Q. Ranft, receiver; J. C. Gilman and George P. Jemison were witnesses; on the same date certificate and receipt were issued. Patent, was transmitted to our office August 7th, 1900.

The EXAMINER.—The witness is excused with the consent of counsel, and let Mr. Albert Jemison take the stand, as I understand it, as a witness for the defense.

Mr. WALSH.—Yes, sir.

(Testimony of Elmer E. Hershey.)

Thursday, two o'clock P. M., December 19th, 1901.

Hearing resumed pursuant to adjournment. Direct Examination of ELMER E. HERSHEY, continued by Mr. Zevely.

Q. You may proceed, Mr. Hershey.

A. July 31st, 1899, Eveline Jemison made timber and stone sworn statement, No. 279, for the west half of the northwest quarter, and the west half of the southwest quarter of section 34, township 15, north range 16 west. Notice was published in the "Missoulian." Sarah Yarger, Laura Roll, C. L. Griswold and Albert Jemison were named as witnesses. On October 7th, 1899, final proof was taken before William Q. Ranft, receiver, with C. L. Griswold and Albert Jemison as witnesses. Final receipt and certificate were issued on said day. And on the 7th of August, patent was transmitted to our office.

Q. Who were the witnesses that you have got there?

A. I gave them to you.

Q. All right, go ahead, I just didn't hear it.

A. July 31st, 1899, Sarah Yarger made timber and stone sworn statement, No. 281, for the west half of the northwest quarter, and the west half of the southwest quarter of section 12, township 14, north of range 15 west. Notice was published in the "Missoulian." Emma Dildina, Laura Roll, C. L. Griswold and Albert Jemison were named as witnesses. On October 7th, 1899, final proof was taken before William Q. Ranft, receiver, and Emma Dildina and Albert Jemison appeared as witnesses. Final

(Testimony of Elmer E. Hershey.)

receipt and certificate was issued on said day, and on August 7th, 1900, patent was transmitted to our office.

By Mr. ZEVELY.—That last is immaterial, unless you want it (addressing counsel for defendant), the time of the transmission of the patent to the land office at Missoula.

By the WITNESS.—I was asked to put it in; that is the reason I do so.

Q. Well, go on to the next.

A. July 31st, 1899, Emma Dildina made timber and stone sworn statement, No. 280, for the east half of the southeast quarter and the southwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section 12, township 14, north of range 15 west. Notice was published in the "Missoulian," and Sarah Yarger, Laura Roll, Albert Jemison and C. L. Griswold were named as witnesses. On October 7th, 1899, final proof was taken before William Q. Ranft, receiver. C. L. Griswold and Albert Jemison appeared as witnesses. On the same date final receipt and certificate were issued.

On July 31st, 1899, Laura Roll made timber and stone sworn statement, No. 278, for the west half of the southeast quarter, and the south half of the southwest quarter, of section 26, township 15, north of range 16 west. Notice was published in the "Missoulian," and Sarah Yarger, Emma Dildine, C. L. Griswold and Albert Jemison were named as witnesses. Final proof was taken before William Q. Ranft, receiver, October 7th, 1899, and C. L.

(Testimony of Elmer E. Hershey.)

Griswold and Albert Jemison appeared as witnesses. On the same day final receipt and certificate were issued.

On August 9th, 1899, Charles C. Snyder made timber and stone sworn statement, No. 286, for lots 1, 2 and 3, in section 2, township 15, north of range 15 west. Notice was published in the "Missoulian," James L. Deering, John Saleen, Daisy Chattin and Stephen Tepper were named as witnesses. On October 20th, 1899, final proof was taken before William Q. Ranft, receiver, John Saleen and Daisy L. Chattin appeared as witnesses, and on the 20th day of October, final receipt and certificate were issued.

By Mr. BICKFORD.—Give me the date of the proof and the date of the certificate, please.

A. Proof was made October 20th, and my certificate was issued on that day. It is all right, the same date. I see it was something else the matter that day. It seems they didn't pay. In figuring up the acreage, something appears to be wrong with it, and a supplemental receipt was issued August 6th, 1900, by William Q. Ranft.

By Mr. BICKFORD.—That is a supplemental receipt.

A. Yes, sir.

(By Mr. BICKFORD.)

Q. What proof was that that you testified about just now? A. Proof of Charles C. Snyder.

WITNESS (Continuing).—It seems that in the first instance he only charged him for 148 and 56/100, whereas, it is over 5 and 20/100 of an acre more.

(Testimony of Elmer E. Hershey.)

August 9th, 1899, J. L. Deering made timber and stone sworn statement, No. 287, for the southwest quarter of section 10, township 15, north of range 15 west. Notice was published in the "Missoulian." Charles C. Snyder, John Saleen, Daisy Chattin, and Stephen Tepper were named as witnesses. On October 20th, 1899, final proof was taken before William Q. Ranft, receiver, and Charles C. Snyder, and John Salleen appeared as witnesses. On October 20th, 1899, final proof was taken before William Q. Ranft, receiver, and Charles Saleen appeared as witnesses, and upon the same date final receipt and certificate were issued.

August 14th, 1899, George Dildine made timber and stone sworn statement, No. 292, for the west half of the northwest quarter, and the north half of the southwest quarter of section 8, township 14, north of range 15 west. Notice was published in the "Missoulian." Albert Jemison, Jacob F. Jemison, C. L. Griswold and J. C. Gillman were named as witnesses. On October 21st, 1899, final proof was taken before William Q. Ranft, receiver, and J. C. Gillman and Albert Jemison appeared as witnesses, and upon October 23d, final receipt and certificate were issued.

By Mr. BICKFORD.—Now, give me the name of that entryman again, please, Mr. Hershey.

A. George Dildine.

WITNESS (Continuing).—Our office was called upon to explain the delay in issuing final certificate and re-

(Testimony of Elmer E. Hershey.)

ceipt and the explanation was made that the delay was occasioned by the amount of work to be done in the office, and the entry was allowed to run over from Saturday to Monday.

August 10th, 1899, John Saleen made timber and stone sworn statement, No. 289, for the west half of the northwest quarter, and the northeast quarter of the northwest quarter, of section 10, township 15 north, of range 15 west. Notice was published in the "Missoulian." J. L. Deering, Daisy Chattin, Charles C. Snyder and Stephen Tepper were named as witnesses. On October 24th, 1899, final proof was taken before William Q. Ranft, receiver, and Charles C. Snyder and Stephen Tepper appeared as witnesses, and upon the same date final receipt and certificate were issued.

August 19th, 1899, Calvin Yarger made timber and stone sworn statement, No. 295, for the west half of the northeast quarter, and the west half of the southeast quarter of section 28, township 15 north, of range 16 west. Notice was published in the "Missoulian." Herbert Eddy, Mary Eddy, Albert Jemison and E. R. Kilbourne were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver, and Herbert Eddy and E. R. Kilbourne appeared as witnesses.

August 19th, 1899, Mary Eddy made timber and stone sworn statement, No. 298, for the west half of the northwest quarter, and the west half of the southwest quarter of section 10, township 14 north, of range 16 west. Notice was issued and published in the "Missoulian." Herbert

(Testimony of Elmer E. Hershey.)

Eddy, Calvin Yarger, Albert Jemison and Thomas Roll were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver, and Calvin Yarger and Thomas Roll appeared as witnesses, and upon the same date final receipt and certificate were issued.

August 19th, 1899, Matilda Eddy made timber and stone sworn statement, No, 297, for the southeast quarter of the northeast quarter, and the north half of the southeast quarter, and the southeast of the southeast quarter of section 14, township 14 north, of range 15 west. Notice was published in the "Missoulian." Thomas Roll, Calvin Yarger, Albert Jemison and Mary Eddy were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver, and Calvin Yarger and Thomas Roll appeared as witnesses, and upon the same date final receipt and certificate were issued.

August 19th, 1899, Thomas Roll made timber and stone sworn statement, No. 299, for the northeast quarter of section 10, township 14 north, of range 16 west. Notice was published in the "Missoulian." Herbert Eddy, Calvin Yarger, Albert Jemison and E. R. Kilbourne were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver, and E. R. Kilbourne and Herbert Eddy appeared as witnesses, and upon the same date final receipt and certificate were issued.

August 19th, 1899, Herbert Eddy made timber and stone sworn statement, No. 296, for the east half of the northeast quarter, and the east half of the southeast quar-

(Testimony of Elmer E. Hershey.)

ter of section 28, township 15 north, of range 16 west. Calvin Yarger, Mary Eddy, Albert Jemison and E. R. Kilbourne were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver, and E. R. Kilbourne and Calvin Yarger appeared as witnesses, and upon the same date final receipt and certificate were issued. Notice was published in the "Missoulian."

August 19th, 1899, James W. Wheaton made timber and stone sworn statement, No. 294, for southwest quarter of section 4, township 14 north, of range 16 west. Notice was published in the "Missoulian." Thomas Roll, Herbert Eddy, Albert J. Jemison and Albert Jemison were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver, and Herbert Eddy and A. J. Jemison appeared as witnesses, and upon the same date final receipt and certificate were issued.

August 16th, 1899, Matthew P. Dunham made timber and stone sworn statement, No. 293, for lots 1, 2 and 3, in section 4, township 15 north, of range 15 west. Notice was published in the "Missoulian." Frank B. Arey, Thomas Bryan, Stephen Tepper and Oscar Muckerheim were named as witnesses, and on the 27th day of October, 1899, final proof was taken before William Q. Ranft, receiver, and Thomas Bryan and Frank B. Arey appeared as witnesses. Upon the same date final certificate and receipt were issued.

By Mr. MAYNARD.—Have you been giving us the date upon which patent was transmitted to your office?

(Testimony of Elmer E. Hershey.)

A. No, sir, I have not, because Mr. Zevely said it was not necessary.

By Mr. BICKFORD.—Well, Mr. Maynard wants you to give the dates upon which the patents were transmitted to your office, so you had better do so. A. Very well.

WITNESS (Continuing).—And on August 7th, 1900, patent was transmitted to our office.

On August 21st, 1899, Frank B. Arey made timber and stone sworn statement, No. 300, for lot 4, and the north half of the southwest quarter of section 4, township 15 north, of range 15 west. Notice was published in the "Missoulian," and Stephen Tepper, Oscar Muckenheim, Matthew P. Dunham and Thomas Bryan were named as witnesses. On October 27th, 1899, final proof was taken before William Q. Ranft, receiver. Thomas Bryan and Matthew P. Dunham appeared as witnesses, and on the same date, final certificate and receipt were issued. On the 7th day of August, 1900, patent in that case was transmitted to our office.

On August 23d, 1899, Graham J. Jemison made timber and stone sworn statement, No. 304, for the east half of the northwest quarter, and the east half of the southwest quarter of section 10, township 14 north, of range 16 west. Notice was published in the "Missoulian," and James W. Wheaton, Thomas Roll, Herbert Eddy and James Mise were named as witnesses, and on the 6th day of November, 1899, before me, final proof was taken. James Mise and James B. Wheaton appearing as witnesses. And upon the same date final receipt and certificate were issued.

(Testimony of Elmer E. Hershey.)

Q. What was the date upon which patent was transmitted to your office in that case?

A. August 7th, 1900.

Q. All right, go ahead.

A. On August 23d, 1899, Jennie Mise made timber and stone sworn statement, No. 305, for the east half of the northeast quarter, and the east half of the southeast quarter of section 34, in township 15 north, of range 16 west. Notice was published in the "Missoulian," and Herbert Eddy, Calvin Yarger, Albert Jemison and Ernest Kilbourne were named as witnesses. On November 6th, 1899, final proof was taken before me, and Ernest Kilbourne and Graham J. Jemison appeared as witnesses, and upon the same date final receipt and certificate were issued.

Q. When was patent transmitted to your office in that case?

A. Patent was transmitted to our office August 7th, 1900.

On August 23d, 1899, Zora Jemison made timber and stone sworn statement No. 303, for the west half of the northeast quarter, and the west half of the southeast quarter, of section 34, township 15 north, of range 16 west. Notice was published in the "Missoulian." Herbert Eddy, Calvin Yarger, James Mise and Albert Jemison were named as witnesses. On November 6th, 1899, before me, final proof was taken. Albert Jemison and Calvin Yarger appeared as witnesses. On the same date final receipt and certificate were issued.

Q. When was patent transmitted to your office?

(Testimony of Elmer E. Hershey.)

A. August 7th, 1900.

On August 23d, 1899, Charles H. Jemison made timber and stone sworn statement No. 302, for the south half of the southwest quarter, and the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section 28, in township 15 north, of range 16 west. Notice was issued and published in the "Missoulian." Calvin Yarger, Herbert Eddy, Ernest Kilbourne and James Mise named as witnesses. Final proof was taken before me November 6th, 1899, and James Mise and Ernest Kilbourne appeared as witnesses. Upon the same day final certificate and receipt were issued.

Q. And when was patent transmitted to your office?

A. And on August 7th, 1900, patent was transmitted to our office.

On August 23d, 1899, James Mise made timber and stone sworn statement No. 301, for the east half of the northwest quarter, and the east half of the southwest quarter, in section 34, township 15 north, of range 16 west. Notice was duly published in the "Missoulian," and Zora Jemison, Herbert Eddy, Calvin Yarger and Albert Jemison were named as witnesses. On November 6th, 1899, final proof was taken before me, and Calvin Yarger and Zora Jemison appeared as witnesses. Upon the same date final receipt and certificate were issued.

Q. And when was patent transmitted to your office?

A. Patent was transmitted to our office August 7th, 1900.

(Testimony of Elmer E. Hershey.)

On August 24th, 1899, Dan McGilliss made timber and stone sworn statement No. 306, for lots 2 and 3, and the east half of the southwest quarter of section 6, in township 15 north, of range 15 west. Notice was published in the "Missoulian." Charles Good, William Grant, Ambrose Martin and Stephen Tepper were named as witnesses. Final proof was taken before me November 7th, 1899. Charles Good and Stephen Tepper appeared as witnesses. On the same date final receipt and certificate were issued.

September 4th, 1899, Martha E. Wright made timber and stone sworn statement No. 316, for the south half of the southwest quarter, and the northeast quarter of the southwest quarter, and lot 4, section 12, township 15 north, of range 15 west. Notice was published in the "Missoulian," in what is known as a combination notice, with Lizzie T. Catlin. They both named E. R. Kilbourne, C. L. Griswold, John B. Catlin and Martha E. Wright and Lizzie T. Catlin as witnesses. Final proof was taken before me November 10th, 1899, and E. R. Kilbourne and John B. Catlin appeared as witnesses. Final receipt and certificate were issued on said date.

Q. Have you given the date of the transmission of patent?

A. August 7th, 1900, patent was transmitted to our office.

On September 4th, 1899, Lizzie T. Catlin made timber and stone sworn statement No. 317, for the northwest quarter of section 12, in township 15 north, of range 15

(Testimony of Elmer E. Hershey.)

west. Notice was published in the "Missoulian," in connection with the notice of Martha E. Wright and E. R. Kilbourne, C. L. Griswold, John B. Catlin, Martha E. Wright and Lizzie T. Catlin were named as witnesses. On November 10th, 1899, final proof was taken before me. Martha E. Wright and E. R. Kilbourne appeared as witnesses. On the same date final certificate and receipt were issued.

On September 5th, 1899, John G. Hendrix made timber and stone sworn statement No. 318, for the west half of the northwest quarter, and the west half of the southwest quarter, of section 32, in township 14 north, of range 15 west. Notice was published in the "Missoulian," and Albert Jemison, C. L. Griswold, Jacob F. Jemison, and E. R. Kilbourne were named as witnesses. On November 10th, 1899, final proof was taken before me, and E. R. Kilbourne and Albert Jemison appeared as witnesses, and on the same date final certificate and receipt were issued.

Q. In the entry of Lizzie T. Catlin, you did not state the date of the transmission of patent to your office. What was that date?

A. On August 7th, 1900.

Q. What was the date of the transmission of patent in the case of Dan McGilliss?

A. August 7th, 1900.

Q. And in the case of John G. Hendrix?

A. On the same date, August 7th, 1900. There were a number of them transmitted together.

(Testimony of Elmer E. Hershey.)

On August 31st, 1899, Elvira M. Hardy made timber and stone sworn statement No. 313, for lots 1, 2, 7 and 8, in section 32, township 15 north, of range 15 west. She named as witnesses, Albert Jemison, Jacob F. Jemison, Robert M. Cobban and S. C. F. Cobban. Final proof was taken before me in that case on November 10th, 1899, and Robert M. Cobban and Albert Jemison appeared as witnesses. Upon the same date final receipt and certificate were issued, and on August 7th, 1900, patent was transmitted to our office.

Q. Was that notice published in the "Missoulian" also? A. Yes, sir.

On August 31st, 1899, John H. Hardy made timber and stone sworn statement No. 314, for lots 3, 4, 5 and 6, in section 32, township 15 north, of range 15 west. Notice was published in the "Missoulian." Albert Jemison, R. M. Cobban, S. C. F. Cobban and Jacob F. Jemison were named as witnesses. On November 10th, 1899, final proof was taken before me, and Albert Jemison and R. M. Cobban appeared as witnesses. On the same date final receipt and certificate were issued. Patent transmitted to our office August 7th, 1900.

On September 8th, 1899, John B. Reeve made timber and stone sworn statement No. 321, for the south half of the northeast quarter, and the west half of the southeast quarter of section 4, township 14, north of range 16 west. Notice was issued and published in the "Missoulian," and Robert Starkey and James Wheaton, E. R. Kilbourne and Albert Jemison were named as wit-

(Testimony of Elmer E. Hershey.)

nesses. He gave his time for making final proof in said notice as November 17th 1899. On November 25th, 1899, final proof was taken before me, and Albert Jemison and Robert Starkey appeared as witnesses, and on the said date final receipt and certificate were issued. Patent issued August 7th, 1900. By Letter "C," July 28th, 1900, "E. W. W.," an affidavit was required, explaining the delay in taking the final proof, which had been made on a day later than that given in the published notice. On August 1st, 1900, an affidavit was made explaining the delay, which is attached to the proof. Do you want that affidavit?

Q. No.

A. November 7th, 1900, patent was transmitted to our office.

(By Mr. BICKFORD.)

Q. Just one question about that. That doesn't appear to be one of the entries concerning which there is any question. It is not contained in the complaint filed in this case.

A. I don't know anything about that.

Q. No, but I am asking you if this is one of the regular entries in your office? A. Yes, sir.

(By. Mr. ZEVELY.)

Q. What was this affidavit, Mr. Hershey?

A. It is in there.

Q. What is the purport of it?

(Testimony of Elmer E. Hershey.)

A. Well, it explains why he didn't make the proof on that day.

Q. What was the occasion of it, delay or something of that kind? A. It is in the affidavit.

Q. Just let that be read in evidence, then.

A. Yes, sir.

The affidavit in the case of John.B. Reeve, is dated Missoula, Montana, August 1st, 1900.

"John B. Reeve, being first duly sworn according to law, deposes and says: That he is the same person who made timber and stone entry No. 1186, November 25th, 1899, for the south half of the northeast quarter, and the west half of the southeast quarter of section 4, township 14, north of range 16 west, M. M. That the final proof in said matter was not made on November 7th, 1899, the date given in his published notice, for the reason that he was disappointed in obtaining the money with which to make payment for said land. That he had made arrangements with parties at Missoula, and had been promised the necessary money, but that on November 7th said parties were absent from the town of Missoula, and he could not get the money from them until the 25th of said month. That he went to the United States land office at Missoula, Montana, and stated to them the facts in the case, and was by the officers advised that he could wait until said parties returned to Missoula, and that the delay for a few days would not cause the rejection of said proof.

(Signed) JOHN B. REEVE.

(Testimony of Elmer E. Hershey.)

Subscribed and sworn to before me this 1st day of August, 1900.

ELMER E. HERSHEY,
Register."

Q. Well, go on to the next.

A. Robert Starkey made timber and stone sworn statement No. 322, September 8th, 1899, for the west half of the southwest quarter, and the northeast quarter of the southwest quarter, and the southwest quarter of the northwest quarter of section 22, in township 15 north, of range 16 west. Notice was issued and published in the "Missoulian," and John B. Reeve, E. R. Kilbourne, Herbert Eddy and Albert Jemison were named as witnesses. Final proof was to be taken on the 17th day of November, 1899. On the 25th day of November, 1899, final proof was taken before me, and Albert Jemison and John B. Reeve were named as witnesses, and upon said date final receipt and certificate were issued. With the monthly returns the papers were sent to the department, and by letter "C," of July 28th, 1900, "E. W. W.," an affidavit was required, explaining the delay in taking said proof. Said party was notified and an affidavit was furnished, which is as follows:

"Robert Starkey being first duly sworn according to law, deposes and says: That he is the same person who made timber and stone entry No. 1187, November 25th, 1899, for the west half of the southwest quarter, and the northeast quarter of the southwest quarter, and the southwest quarter of the northwest quarter of section

(Testimony of Elmer E. Hershey.)

22, township 15, north of range 16 west, M. M. That the final proof in said matter was not made on November 17th, 1899, the date given in his published notice, for the reason that he was disappointed in obtaining the money with which to make payment for said land. That he had made arrangements with parties in Missoula, and had been promised the necessary money, but that on November 17th, said parties were absent from the town of Missoula, and he could not get the money from them until the 25th of said month. That he went to the United States land office at Missoula, Montana, and stated to them the facts in the case, and were by the officers advised that he could wait until said parties returned to Missoula, and that the delay for a few days would not cause the rejection of said proof.

(Signed) ROBERT STARKEY.

Subscribed and sworn to before me this 1st day of August, A. D. 1900.

ELMER E. HERSHEY,
Register."

Q. What was done with that affidavit?

A. The affidavit was transmitted to the Department. On November 7th, 1900 patent was issued in that case.

September 18th, 1899, Albert Ehle made timber and stone sworn statement No. 328, for the purchase of the northwest quarter of section 32, in township 15 north, of range 16 west. Notice was issued and published in the "Missoulian," and Robert Starkey, John B. Reeve, C. L. Griswold and Albert Jemison were named as wit-

(Testimony of Elmer E. Hershey.)

nesses. The date given in the notice for making final proof was November 24th, 1899. On November 25th, 1899, final proof was taken before Mr. Ranft, the receiver, and John B. Reeve and Albert Jemison were the witnesses. The witnesses were sworn by Mr. Ranft, the receiver, on November 25th, 1899, final certificate and receipt were issued. By letter "C," July 25th, 1900, "E. W. W.," an affidavit was required, explaining the delay why the proof was not taken on the 24th, instead of the 25th.

Q. Was that affidavit the same as the other, the one for which they could not get the money?

A. No, that is not the same.

Q. What is the difference between them?

A. Well, he stated that he could go elsewhere. Here is my letter attached, transmitting it to the commissioner's office. It is practically the same.

Q. You needn't put that into the record if it is the same thing.

A. It is the same thing; he says he could go elsewhere and get the money, and we informed him that it would not be necessary, that he could have ten days' additional time.

Q. Well, perhaps it would be well to put the affidavit in.

A. All right, I will read it.

"Albert Ehle, being first duly sworn according to law, deposes and says: That he is the same person who made timber and stone entry No. 1188, for the northwest quar-

(Testimony of Elmer E. Hershey.)

ter of section 32, township 15 north, of range 16 west. That on November 24th, 1899, the date set for making said proof, he was unable to obtain the money with which to pay for said land. That he had, prior to said time, made arrangements with parties at Missoula, Montana, from whom he expected to obtain said money. That he was unable to do so until the 25th day of November. That he called at the United States land office, and was informed that under the circumstances the delay of a day or so would not cause his proof to be rejected, and that it would not be necessary for him to seek other parties from whom to obtain the money to pay for said lands. That the parties from whom he obtained the money to pay for said land were absent from the city, November 24th, and this was the cause of the delay.

(Signed) ALBERT EHLE.

Subscribed and sworn to before me this 18th day of August, 1900.

ELMER E. HERSHEY,
Register."

By Mr. BICKFORD.—I want, at this point, to explain and have it appear in the record, that the objection was not made to the testimony in this case when the request was made for the reading of the affidavits of the circumstances connected with the making of this final proof, because it did not appear to us that this testimony and these affidavits would be offered in evidence, and we desire now to object to their introduction and the read-

(Testimony of Elmer E. Hershey.)

ing of them in evidence, for the reason that there is nothing in the bill of complaint filed in this case, charging that the defendant in this case is now the owner of the land, or that he ever bought the land, or that there was anything fraudulent about the entry; in fact, the record, so far as the complaint is concerned—the entire bill in the case shows no transaction whatever concerning either of these entrymen, or that of Robert Starkey or John B. Reeve.

Q. What is this entry that you are reading now?

A. Albert Ehle. There is also attached to said proof my letter to the commissioner of the general land office at Washington, D. C., August 18th, 1900, transmitting the affidavit.

Q. Is this in the Starkey case?

A. No, this is the Ehle case, the Albert Ehle case, that I am reading from now.

Q. Is that in the bill of complaint?

A. No, not Starkey nor Ehle, nor John B. Reeve.

Q. I only asked you to read those that were in the bill of complaint.

A. My dear sir, I don't know what are in the bill of complaint. When I started out to read these, I said these were returned to the commissioner. I didn't know whether those were named in the bill of complaint or not.

Q. Well, I didn't ask you for the entries—all the entries under the Timber and Stone Act.

(Testimony of Elmer E. Hershey.)

A. Well, I beg your pardon. I don't care to read anything you gentlemen don't want.

Q. You don't know what I want?

A. No, sir, I don't know what you want. I supposed you wanted those as much as you did any other.

Q. I just simply wanted the entries—those that are named in the bill of complaint and those that are named in the subpoena duces tecum.

A. I should say there are ten here that are not named in the subpoena.

Q. I want those that you know, or that I supposed you knew, were named in the bill of complaint.

A. Well, I suppose that all that were returned to the commissioner were named in the bill of complaint.

Q. Well, who informed you that these two were not named in the bill of complaint?

A. Yourself, right now. I supposed they were all named in the bill of complaint, or I wouldn't have read them. I haven't any knowledge of that matter, except the word of counsel. I don't know whether they are named in the bill of complaint or not.

By Mr. BICKFORD.—Of course I knew nothing as to that, if you Honor please, and if it is a fact that they are not named in the bill of complaint, it is entirely irrelevant and immaterial to the issues in this case, and we object, of course, to anything appearing in the record concerning entries that are not named in the bill of complaint, and I move that the testimony relative to the entries not named in the bill of complaint be stricken out.

(Testimony of Elmer E. Hershey.)

A. I don't know whether you want this one or not.

Q. Well, what one is that?

A. Eliza A. Reeve.

Q. For what land is that?

A. Southwest quarter of section 32, in township 15 north, of range 16 west.

Q. How many more are there altogether, Mr. Hershey? A. There are four here, or five.

Q. Well, would that be all of them?

A. Yes, sir.

Q. Well, then, proceed and read them. Four or five don't make very much difference.

A. Well, I didn't finish up this Robert Starkey. Do you want that one finished up?

Q. Yes, sir. That should be read into the record. That is named in the bill of complaint, I believe.

A. I didn't mean Robert Starkey; I meant Albert Ehle.

Transmitting that affidavit, I wrote the honorable commissioner of the general land office at Washington, D. C., as follows:

"Referring to your letter, 'E. W. W.' of July 28th, 1900, in the case of timber and stone entry No. 1188, made November 25th, 1899, by Albert Ehle, for the northwest quarter of section 32, township 15 north, of range 16 west, M. M., proof of which was to have been made on the 24th day of November, 1899, we have the honor herewith to transmit affidavit of said party, as directed by said letter. In this connection we beg to re-

(Testimony of Elmer E. Hershey.)

port that on November 24th, 1898, said party appeared in this office, as stated in said affidavit, and stated to us that the parties from whom he expected to obtain the money with which to pay for said land were absent from town, and stated that if it was necessary he would go elsewhere and obtain the money. He also stated that the parties with whom he had made arrangements would return in a day or so, and we advised him that we would continue the proof until the parties arrived, if it was within ten days from the date fixed in the final proof notice.

Very respectfully,

ELMER E. HERSHEY,

Register."

Q. Go on with the next one, Mr. Hershey.

A. Now, here is one that appears to be out of order. How that got over here I don't know. I don't know how it could get over there. (Witness refers to papers that were lying on the stenographer's table, apart from the bundle from which he had been reading.)

(Witness continues.) Daisy L. Chattin. On August 9th, 1899, Daisy L. Chattin made timber and stone sworn statement No. 288, for the southeast quarter of section 10, in township 15 north, of range 15 west. Notice was issued and published in the "Missoulian," and Charles C. Snyder, J. L. Deering, John Saleen and Stephen Tepper were named as witnesses. On October 20th, 1899, final proof was taken before William Q. Ranft, receiver. And John Saleen and Charles C. Snyder were witnesses.

(Testimony of Elmer E. Hershey.)

And on the same day final receipt and certificate were issued. Patent was transmitted to our office August 7th, 1900.

On September 18th, 1899, Mary L. Starkey made timber and stone sworn statement No. 333, for the south half of the northeast quarter, and the north half of the southeast quarter of section 32, in township 15 north, of range 16 west. Notice was issued and published in the "Missoulian," and John B. Reeve, Albert E. Ehle, C. L. Griswold and Albert Jemison were named as witnesses. On November 25th, 1899, final proof was taken before me, and John B. Reeve and C. L. Griswold appeared as witnesses. On said date final receipt and certificate were issued. On September 22d, 1899, John Murtaugh made timber and stone sworn statement No. 339, for the north half of the northwest quarter, and the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section 26, in township 15 north, of range 16 west. Notice was issued and published in the "Missoulian," and John Alford, John Hendrix, Albert Jemison and Laura Roll were named as witnesses. On December 4th, 1899, final proof was taken before me. John Alford and Albert Jemison appearing as witnesses. And upon said date final certificate and receipt were issued.

Q. When was patent transmitted to your office in that case?

A. Patent was transmitted to our office August 7th, 1900.

(Testimony of Elmer E. Hershey.)

September 18th, 1899, Eliza A. Reeve made timber and stone sworn statement, No. 332, for the southwest quarter of section 32, township 15 north, of range 16 west. She named as witnesses, Albert Ehle, N. J. Ehle, Robert Starkey and Albert Jemison. Final proof was taken before me November 25th, 1899. Albert Jemison and Robert Starkie appeared as her witnesses, and on said date final certificate and receipt were issued. The patent was issued and transmitted to our office August 7th, 1900.

October 9th, 1899, Effie M. Kilbourne made timber and stone sworn statement No. 347, for the southwest quarter of section 2, in township 13 north, of range 15 west. Notice was issued and published in the "Missoulian," and E. R. Kilbourne, C. L. Griswold, George McDonald and Ed. Harding were named as witnesses. Final proof was taken before me December 15th, 1899, C. L. Griswold and E. R. Kilbourne appeared as witnesses, and on the same date final receipt and certificate were issued. Patent was transmitted to our office August 7th, 1900.

Q. What are those papers over there, Mr. Hershey? (Counsel refers to papers lying on the table in front of witness.)

A. Which do you mean, this bunch here?

Q. Yes, those other papers in that bundle there.

A. These here, do you mean? (Witness takes bundle of papers in his hand.)

Q. Yes, sir, those are the papers I refer to.

(Testimony of Elmer E. Hershey.)

A. I have read them; those are the papers I have read.

Q. I wish you would be kind enough, Mr. Hershey, to read into the record one of those entries from the beginning?

A. I would say that they are not necessarily alike, except the printed forms, of course.

Q. Well, read them into the record. Take the first paper, what is that?

A. Timber and stone sworn statement.

Q. Just read that into the record, Mr. Hershey, please.

A. "This affidavit can be made only upon the personal knowledge of the applicant, derived from his own personal examination of the land.

TIMBER AND STONE LANDS—SWORN STATEMENT.

(To be made in duplicate.)

Land Office at Missoula, Montana, October 9th, 1899.

I, Mrs. Effie M. Kilbourne, of Potomac, county of Missoula, State of Montana, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled, "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the public land States by act of August 4, 1892, for the purchase of the southwest quarter of section 2, township 13 north, of range 15 west, in the district of lands subject to sale at Missoula, Montana, do solemnly swear that I am a native

(Testimony of Elmer E. Hershey.)

citizen of the United States, of the age of thirty years, and by occupation a housekeeper; that I have personally examined said lands, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my postoffice address is Potomac, Missoula Co., Montana.

(Signed) EFFIE M. KILBOURNE,

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by ————), and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 9th day of October, 1899.

ELMER E. HERSHEY,
Register.

(Testimony of Elmer E. Hershey.)

Note.—Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land or of any right, title or claim thereto, are absolutely null and void as against the United States. In case the party has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished. If his residence is in a city, the street and number must be given.

(4—227)

CERTIFICATE AS TO POSTING OF NOTICE.

Land Office at Missoula, Montana,

December 15th, 1899.

I, Elmer E. Hershey, register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of sixty days, I having first posted said notice on the 9th day of October, 1899, and that there are no adverse claims to said land known to this office.

ELMER E. HERSHEY,

Register."

The WITNESS.—Attached to that is a printed notice, do you want that read?

(Testimony of Elmer E. Hershey.)

"TIMBER LAND ACT, JUNE 3, 1878, NOTICE FOR PUBLICATION.

Application.

Land Office, Missoula, Montana,
October 9th, 1899.

Notice is hereby given, that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington territory," as extended to all the public land States by act of August 4, 1892, Effie M. Kilbourne of Potomac, county of Missoula, State of Montana, has this day filed in this office her sworn statement No. 347, for the purchase of the southwest quarter of section 2, in township 13 north, range 15 west, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish her claim to said land before the register and receiver of this office at Missoula, Montana, on Friday, the 15th day of December, 1899. She names as witnesses E. R. Kilbourne, of Potomac, Montana, C. L. Griswold, of Clearwater, Montana, George McDonald, of Potomac, Montana, and Ed. Harding of Potomac, Montana. Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 15th day of December, 1899.

ELMER E. HERSHEY,
Register.

First publication, October 13th. 38—10 T."

(Testimony of Elmer E. Hershey.)

AFFIDAVIT OF PUBLICATION.

State of Montana, }
County of Missoula. } ss.

M. H. Bryan, being first duly sworn, says: He is a co-partner in the firm of Bryan Brothers and Houck, publishers of the "Missoulian," a newspaper of general circulation, printed and published weekly at the city of Missoula, in the said county and State, and is the chief clerk and foreman of said newspaper. And that the advertisement of timber proof notice Effie M. Kilbourne, a copy of which is hereto attached, was correctly published in the regular and entire issue of every number of said newspaper once a week for ten consecutive weeks, the first publication thereof having been made on the 13th day of October, 1899, and the last publication thereof having been made on the 15th day of December, 1899.

M. H. BRYAN.

Subscribed and sworn to before me, at Missoula, Missoula County, Montana, on this 15th day of December, A. D. 1899.

ELMER E. HERSHEY,
Register."

The WITNESS.—Then there is the copy of the notice of publication; that is, the printed copy of the notice that I have heretofore read, which was attached:

(Testimony of Elmer E. Hershey.)

"4-00-1.

Land Office at Missoula, Montana,

September 15th, 1899.

I, Effie M. Kilbourne, of Missoula, Montana, do hereby apply to purchase the southwest quarter of section 2, in township 13 north, range 15 west, containing one hundred and sixty acres, according to the returns of the surveyor general, for which I agree with the register to give at the rate of two dollars and fifty cents per acre.

EFFIE M. KILBOURNE.

I, Elmer E. Hershey, register of the land office at Missoula, Montana, do hereby certify that the lot above-described contains one hundred and sixty acres, as mentioned above, and that the price agreed upon is two dollars and fifty cents per acre.

ELMER E. HERSHEY,

Register."

Q. Where is that, is that in all of them?

A. Yes, sir.

Q. Where is it in this? A. Four—371.

Q. What is that paper you have just read read; what is the technical name of it?

A. That is the application to purchase.

Q. That is the name of the paper is it?

A. Yes, that is what I call it; it is form 001, application to purchase.

Q. All right.

A. "The testimony of two witnesses in this form, taken separately, required in each case.

(Testimony of Elmer E. Hershey.)

Testimony of Witness Under Act of June 3, 1878, and August 4, 1892.

C. L. Griswold, being called as a witness in support of the application of Effie M. Kilbourne to purchase the southwest quarter of section 2, township 13 north, range 15 west, testified as follows:

Q. 1. What is your age, postoffice address, and where do you reside?

A. Forty-seven years; Missoula, Montana, where I reside; formerly resided at Clearwater, Montana.

Q. 2. Are you acquainted with the land above-described by personal inspection of each of its smallest legal subdivisions? A. Yes, sir.

Q. 3. When and in what manner was such inspection made?

A. September, 1898, on foot, made examination of the land. Last time was about December 1st, 1899.

Q. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to, the said applicant? A. No, no improvements.

Q. 5. Is it fit for cultivation? A. It is not.

Q. 6. What causes render it unfit for cultivation?

A. High and rolling; the soil is light and gravelly and could not be irrigated.

Q. 7. Are there any salines or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

(Testimony of Elmer E. Hershey.)

A. None in sight, not to my knowledge.

Q. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for its timber.

Q. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. Worthless for any other purpose, and timber has a value.

Q. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

A. She has not to my knowledge.

Q. 11. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon? A. I am not, no, sir.

C. L. GRISWOLD.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 15th day of December, 1899.

ELMER E. HERSHEY,
Register.

(Testimony of Elmer E. Hershey.)

Note.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained, that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX—CRIMES—Chapter 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See sec. 1750.)"

Q. What is the next paper?

A. The next is form No. 4-370, and is the testimony of the claimant. The testimony of the two witnesses was taken on the same day and in the same way. That is the same blank that I read before, with different answers by the parties. Do you want me to read that?

Q. No.

(Testimony of Elmer E. Hershey.)

A. The affidavit of the two witnesses is the same, and the statements are, too, practically.

By Mr. WALSH.—The same questions are propounded to the witnesses, and the answers are substantially the same as those put to the witnesses?

A. Yes, sir.

By Mr. MAYNARD.—Perhaps we had better have it read into the record so as to make it complete.

By the WITNESS.—Very well.

"(4-370)

(The testimony of claimant and witnesses must be taken at the same time, and before the register or receiver of the land district in which the land is situated.)

TIMBER AND STONE LANDS.

Testimony of Claimant.

Effie M. Kilbourne, being called as a witness in support of his application"—

By Mr. ZEVELY.—It would be "her," wouldn't it?

A. No, I am reading it "his"; we never change the blanks, that is, the printed forms.

—"to purchase the southwest quarter of section 2, township 13 north, of range 15 west"—(I never change the form, some folks do. The statement may be a little broad.)

Q. Well, you are reading it as it is there, are you?

A. Yes, I am reading it as it is here.

Q. The law is that it wouldn't vitiate the papers if

(Testimony of Elmer E. Hershey.)

you didn't scratch out "his" or "her," as the case may be?

A. No, I suppose not. Well, that is the way it is here, and I am reading it as it is here.

Q. Very well, go on then.

A. Very well—"testifies as follows:

Q. 1. What is your age, postoffice address, and where do you reside?

A. Thirty years, Potomac, Montana, where I reside.

Q. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born? A. Yes, sir, Missouri.

Q. 3. Are you the identical person who applied to purchase this land on the 9th day of October, 1899, and made the sworn statement assigned by law before the register on that day? A. Yes, sir.

Q. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions? A. Yes, sir.

Q. 5. When and in what manner was such inspection made?

A. About October 7th, and again December 2d, 1899, walked over it, and with those with me made an estimate of the timber on the land.

Q. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

A. Not occupied, no improvements.

(Testimony of Elmer E. Hershey.)

Q. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

A. No, sir, not fit then.

Q. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

A. High and rolling, rocky and gravelly soil; no water to irrigate with, and it is situated on the mountain.

Q. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

A. Not that I know of.

Q. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for its timber

Q. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. Because it is high and cannot be cultivated and has no mineral, and the timber is its only value.

Q. 12. What is the estimated market value of the timber standing upon this land?

A. Nine hundred dollars.

Q. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whom-

(Testimony of Elmer E. Hershey.)

soever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself? A. No, sir.

Q. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

A. Yes, to my own use.

Q. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

A. No, sir, I am a married woman and purchase this land with my own money, and in which my husband has no interest or claim.

(Signed) EFFIE M. KILBOURNE.

I hereby certify that the above-named Effie M. Kilbourne personally appeared before me; that I verily believe affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Missoula, this 15th day of December, 1899.

ELMER E. HERSHEY,
Register.

Note.—Every person swearing falsely to the above deposition is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto,

(Testimony of Elmer E. Hershey.)

the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title, or claim thereto, are absolutely null and void as against the United States.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use, and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person or persons except himself, and am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm or corporation. ELMER E. HERSHEY,

Register."

The WITNESS.—The next is as follows:

"4-131.

TIMBER AND STONE.

Receiver's Office at Missoula, Mont.,

December 15/1899.

Received from Effie M. Kilbourne, of Missoula county,

(Testimony of Elmer E. Hershey.)

Montana, the sum of four hundred dollars and no cents; being in full for the southwest quarter of section No. 2, in township No. 13, of range No. 15 west, containing 160 acres and no hundredths, at $2.50 per acre.

$400. WILLIAM Q. RANFT,
Receiver.

$1.00 testimony fee received. Number of written words 444. Rate per 100 words, 22 1/2 cents. Also register's and receiver's fee of ten dollars."

The WITNESS.—The next is

"4-189.

TIMBER AND STONE NO. 347.

No. 1204. Land Office at Missoula, Montana,
December 15th, 1899.

It is hereby certified that, in pursuance of law, Effie M. Kilbourne, residing at Potomac, in Missoula county, State of Montana, on this date purchased of the register of this office the southwest quarter of section No. 2, in township No. 13, of range No. 15 west, of the Montana principal meridian, Montana, containing 160 acres, at the rate of two dollars and fifty cents per acre, amounting to four hundred dollars, and no cents, for which the said Effie M. Kilbourne has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the commissioner of the general land office, the said Effie M. Kilbourne shall be entitled to receive a patent for the lot above described.

ELMER E. HERSHEY,
Register.

(Testimony of Elmer E. Hershey.)

[Endorsed on the back]: No. 1204. Timber and Stone No. 347. Cash Entry. Land Office at Missoula, Montana. Patent to contain reservation according to proviso to the Act of Congress of August 30, 1890.

Q. That makes the complete record in that case, as you understand it, as required by law?

A. Yes, sir, with the exception of the entry on our books, of course.

Q. And these were the printed blanks that were furnished your office by the Government? A. Yes, sir.

Q. And those blanks were used in each and every of the cases that you have read since you have been on the stand? A. Yes, sir.

Q. And they are all alike with the single exception of the names, of the descriptions and of the answers?

A. Yes, sir.

Q. Are the printed forms the same in each case?

A. Yes, sir.

Cross-examination.

(By Mr. BICKFORD.)

Q. You have testified, Mr. Hershey, on your examination in chief, that you assumed the duties of register of the Missoula land office, August 6th, 1898? A. Yes, sir.

Q. Who was the receiver of the land office at that time?

A. William Q. Ranft.

Q. His appointment was prior to yours, or at the same time? A. A little over a year prior, I think.

Q. Now, with reference to your being an attorney at

(Testimony of Elmer E. Hershey.)

law in Missoula, Montana. You have testified, I believe, that you have been an attorney at law since 1891?

A. Yes, sir.

Q. Had you been in the general practice of law up to the time of your appointment as register of the United States land office at Missoula? A. Yes, sir.

Q. And that was your sole business and occupation up to that time? A. Yes, sir.

Q. When was it that you became an attorney and counselor at law for Robert M. Cobban, if you remember?

A. At the time that Cobban & Dinsmore purchased the Higgins block, I think about March or April, 1900.

Q. At the time when you became the attorney for R. M. Cobban, were there any matters and things pending before the land office at Missoula, in which you knew that Mr. Cobban had an interest?

A. No, and I will say further, that I only became counsel for them in special matters. And it was clearly understood what my duties were. The matter, that I took a hold of.

Q. Were any of the matters concerning which you were employed to advise and counsel Mr. Cobban connected with the land entries, or the land business in the United States land office at Missoula, Montana?

A. No, not in the slightest. There was not a word that could be so construed, in any shape or form.

Q. Did the rules of the United States Land Office Department allow a register and receiver to become counsel and attorney for anyone?

(Testimony of Elmer E. Hershey.)

A. I know nothing to the contrary, but I myself, have refused to take anything that would take me away from the office, or that could possibly interfere in any way with my office duties.

Q. Then this employment concerning which you have testified, was not such an employment as in any way interfered with your duties as register of the land office?

A. No, sir.

Q. Or any such employment as hampered you in the performance of your duties, was it?

A. Not in the least.

Q. You have been interrogated with reference to your relationship to John B. Catlin? A. Yes, sir.

Q. I will ask you to state how long you have known Mr. Catlin? A. About sixteen years.

Q. Where did he live when you first knew him?

A. In the Bitterroot valley at Stevensville.

Q. How far from the town of Missoula?

A. Thirty miles.

Q. Do you know how long John B. Catlin has lived in the State of Montana?

A. I can't give the exact length of time that he has lived in the State of Montana, but he has lived here long enough to be a member of the Montana Society of Pioneers.

Q. How long a residence does that require?

A. I think it requires a residence of—

By the EXAMINER.—Before January 1st, 1867, anyhow.

(Testimony of Elmer E. Hershey.)

A. Well, I really cannot say. I was going to say August 1st, of 1867.

Q. Something over thirty years?

By the EXAMINER.—Thirty-three years, isn't it. That takes it back that length of time. I am a Pioneer myself, that is the reason I know.

Q. What, if any, official positions has Mr. Catlin held in the State of Montana since you have known him?

A. He was the first receiver of the Missoula land office.

Q. What time was that?

A. That was from the time it opened until '94; I have forgotten just when the office was opened. It was opened and then the register died. It was not— It was sort of closed for a little while. I really don't know how long that was; but it seems to me it was in '91 when it was first opened for business.

Q. What other official positions has he held there, State or Federal, since you have known him?

A. He has been a United States commissioner, appointed by the—Judge Knowles.

Q. Do you know of his having been a member of the Montana Legislative Assembly?

By Mr. MAYNARD.—This is interesting, but I object to the question upon the ground it is not cross-examination, and entirely immaterial and irrelevant to any matter called out by counsel on the direct examination of the witness.

(Testimony of Elmer E. Hershey.)

A. He was a member of the first constitutional convention, a member from Missoula county.

Q. Well, what other official positions has he held?

A. I just don't recall any.

Q. Wasn't he a member of the legislature in 1881 or 2? A. Well, I couldn't say.

Q. In 1891 and '92? A. No, I think not.

Q. Was he the agent—the Indian agent of the Blackfoot Indians?

A. Yes, he held the position of Indian agent for a number of years.

Q. How long has he been engaged in the business or occupation of an attorney in the United States Land Department? A. About seven years.

Q. Where has he been practicing during that time?

A. Missoula, Montana, and the Helena land office. He has had business here and in Missoula. I am not so sure that he has had any business whatever in any other land office.

Q. You stated, I believe, that he had been indicted by the United States grand jury, in your examination in chief, did you not? A. Yes, sir; I so understood.

Q. Is he the same John B. Catlin, who through his attorneys has filed a plea in abatement, do you know?

A. Yes, sir; I think there are nine or ten pleas in abatement filed in those cases.

Q. Can you give the Court an intimation of what the pleas consist of?

(Testimony of Elmer E. Hershey.)

By Mr. MAYNARD.—I object to that question as so ridiculous as not to come within the category of any legal objection that could be made by a reputable attorney, but some of them would be that it isn't proper cross-examination, and entirely immaterial and irrelevant, and that the pleas in abatement themselves would be the best evidence, if competent at all; and in no way or form of law could it be used or referred to in the present proceedings here under consideration.

By Mr. WALSH.—We quite agree with counsel, but we submit that it is quite as relevant, with reference to John B. Catlin, as some of the testimony offered by the Government.

A. I can, in a general way, state what they do contain.

Q. Please do so.

A. The majority of them were misconduct of Mr. Maynard before the grand jury.

Q. And Mr. Catlin, as I understand it, was acting as an attorney for the land office, during your incumbency of the office as register? A. Yes, sir.

Q. I will ask you to state if you treated Mr. Catlin any different from what you did any other attorney practicing before the land office?

A. No. I will say that I have always been very careful not to mention Mr. Catlin in preference to others. It was something that I thought of when I went into the office, on account of the relationship that existed between us; and I don't believe anybody can say that I ever treated him any different than I treated other attorneys. In

(Testimony of Elmer E. Hershey.)

fact, if I mentioned Mr. Catlin's name, I don't think I ever mentioned his name first. I guess that is enough; I was going to say more.

Q. Well, go on and state what you wish to with reference to that matter.

A. Well, I say I really tried—there was one point that I didn't want anybody to charge me with, and that was, showing partiality to him. And I don't think anyone can successfully maintain that position.

Q. You have never been charged with maintaining any partiality, have you?

A. No, sir; the attorneys at Missoula never charged it.

Q. I will ask you to tell who Lynn S. Catlin is?

A. He is a son of Pope Catlin, a brother of John B. Catlin.

Q. Have you found him to be an efficient and attentive clerk in your office?

A. Very efficient. I believe that all inspectors that have visited our office since he has been a clerk have spoken very highly of him in every respect.

Q. I will ask you to state whether or not he was appointed to the position he now holds at your solicitation?

A. No, sir; he took the civil service examination and is under the civil service laws; but at my request, to him to do so. But I had nothing to do with the appointment; of course, I requested his appointment if possible, but it actually came in the regular way, through the civil service commission.

(Testimony of Elmer E. Hershey.)

Q. Who did he succeed in your office?

A. He practically succeeded no one. There was an intervening space of a month or so that we didn't have anybody. Miss Hasting was a clerk in our office when I first went in, and remained there up until June 30th of that year.

Q. Now, with reference to the number of timber and stone entries that you have testified to here. How many were there that you testified to?

A. There were forty-seven.

Q. During the time intervening between the first timber and stone entry which you testified to, and the last timber and stone entry testified to by you, how many entries of that kind have been made in your office?

A. Fifty-nine.

Q. Did you understand the question?

A. That may be modified some. There was a commuted homestead there that was about the first one. I counted from that, and it was excluded when I started to read, but from that commuted homestead on, between those dates, there was fifty-nine timber and stone entries made besides that.

Q. How many in all, then, would there have been made during that time?

A. One hundred and six, altogether.

Q. How many entries of all kind were made in the United States land office during the year that these entries were made?

(Testimony of Elmer E. Hershey.)

A. I couldn't say; it was a large increase over the year before.

Q. About how much of a percentage of increase would there be?

A. Two hundred and five per cent, I believe is what we figured it at for the inspector who was there that year. I think that about two hundred and five per cent would be a very fair estimation.

Q. About how many would be the number of entries made in your office in the course of one year?

A. Well, that is pretty hard to tell. I couldn't guess at it; it is pretty hard to say. If I had thought you would have asked me, I would have counted them.

Q. What reason was there, for being more land entries in the year 1899 than in the year 1898?

A. Well, the business was picking up, we were getting over hard times, and there was a picking up in all lines; all kinds of entries were being made. It was a change from a democratic prosperity to republican prosperity.

Q. Did the survey of the public domain have anything to do with that?

A. Well, there were surveys made, but how the surveys would compare with the year before, I couldn't say.

Q. How would the land which was surveyed compare—with the year before—compare with the lands that were surveyed the year before that, as to making

(Testimony of Elmer E. Hershey.)

it available for entry under any of the land laws—of the United States?

A. Well, new surveys were coming in, and had been coming in generally. I don't know how these would affect—I don't know how often we got new surveys in our office, and I couldn't just tell how they would compare.

Q. I will ask you to state—I will put the question in another way. Whether or no the surveys that were coming in before 1898 were a part of the lands—locations, that were begun during the year 1898, under the entries which you have testified to.

A. Some I think were, but whether they were all new surveys or not, I couldn't say.

Q. About how long is it between actual survey and the time when plats of a survey are received in the land office?

A. About eighteen months or two years.

Q. Then the surveys of lands would be delayed in reaching your office, something like a year and a half?

A. Yes, sir.

Q. I will ask you to state what the practice of your office is, with reference to dealing with the attorneys that practice before your office—the land office?

A. There is a rule of the Department that requests us to recognize an attorney, and he has complete and absolute control of every case that he is in.

Q. Did you observe that rule in your office?

A. We always do.

(Testimony of Elmer E. Hershey.)

Q. Now, please state whether or no it is the practice in your office to receive the papers from an attorney when they are presented by him. A. Certainly.

Q. What is the practice in your office with reference to the delivery of final receipts to the attorney?

A. Well, that of course, I can only say as to what Mr. Ranft informs me.

Q. Well, what was it?

A. Well, I understood it to be his practice to always send it to the attorney unless different directions were given. I know that very frequently he inquires of me when papers come in who they were received from—what attorney, if any, was in the case, and if no directions to the contrary are given, he sends the receipt to the attorney.

Q. I will ask you to state whether or no there is any practice in the land office with reference to the final or any papers that are presented there, in making applications or final proofs for timber and stone entries?

A. All papers in entries of homesteads and under the act of June 5th, 1872, are required to be written out by the parties. We complete final proofs under the Timber and Stone Act.

Q. That rule is observed by you generally?

A. Yes, sir.

Q. Is it observed in every instance?

A. There may be for some cause that we do write up the papers ourselves, but it is so exceptional that I cannot think of a case.

(Testimony of Elmer E. Hershey.)

Q. In making out your papers on final proof, is it your practice to read the questions and answers to the applicant?

A. Sometimes we read the questions and the answers, and sometimes we go over it with the party. I don't think it is always the practice to re-read it, but sometimes, if the witness appears to be rather dull, or if there is any reason why we feel we ought to read it over to him, we do it.

Q. You always, in making out these final papers, and the testimony of witnesses, and the statements of entrymen or entrywomen, see to it that they understand the paper—the purport of the paper which they sign?

A. Yes, sir.

Q. I will ask you to state if—all the papers which you read in full into the record a few moments ago, was a fair sample of both questions and answers as they are generally filed in your land office? A. Yes, sir.

By Mr. BICKFORD.—I will state that I have had a talk with Mr. Maynard, and it has been suggested by him, and really acquiesced in by him, that we adjourn now, it being near the Christmas holidays, until after the holidays; and it has been agreed by all the parties that we adjourn now until the 15th of January, 1902.

By the EXAMINER.—Well, if that is the agreement, it may be put into the record, and I suppose we can adjourn to meet here at that time, and if counsel agree

(Testimony of Elmer E. Hershey.)

otherwise, the record can then be made to show that the hearing was resumed at the place so agreed upon.

That being the understanding, we will now adjourn until the 15th day of January, 1902, at ten o'clock, A. M., the place of the hearing to be at this office.

HENRY N. BLAKE,
Examiner in Chancery.

Thursday, February 13th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

Whereupon the witness, ELMER E. HERSHEY, was recalled for further

Cross-examination.

(By Mr. BICKFORD.)

Q. Mr. Hershey, the last question asked you was if the papers read by you, and all the papers which you had read in full into the record, were a fair sample of both the questions and answers as they are generally filed in your land office, and your answer to that question was yes. I will ask you to state whether you have now with you the entries or the papers covering the entries which were made in the Missoula land office?

A. I have.

Q. I wish you would select from among those timber and stone entries, a sample entry, and read to the Court the questions and answers that are propounded in the case of a final entry.

A. I suppose any one is a sample—

(Testimony of Elmer E. Hershey.)

Mr. MAYNARD.—Wasn't that all gone over once before?

The WITNESS.—I am only a witness, of course, but I read one through; certainly it is in the record.

Q. Then, I will change the form of the question and put this question: Did you read the papers on final proof in your examination in chief?

A. I did. My recollection of the matter is that I read the paper of Mrs. Effie M. Kilburn.

Q. Now, I will ask you to take the papers in the other timber and stone entries which were made in the Missoula land office, and some of which are in controversy here, and give me the name of the entryman, the number of the entry, the description of the land entered and the names of the witnesses in each of those entries.

A. I think I read that, too; it has all been gone over with. I have not corrected it up yet, but my recollection about the matter is that I read in full the last paper that I had, and that was Kilburn's.

Q. Well, if it is already in the record, I don't want it again. I believe you stated in your examination in chief, Mr. Hershey, that there was an increase in the business of the land office during the years 1898, 1899 and 1900. Did you so state?

A. Particularly during the fiscal year ending June 30th, 1900, which would include all of the entries in controversy.

Q. I will ask you to state whether this increase in the business of the land office was in any particular di-

(Testimony of Elmer E. Hershey.)

rection, or was it along all lines of entries made on public lands? A. All lines.

Q. It was not, then, confined to entries under the Timber and Stone Acts of Congress?

A. Oh, no; as much of an increase in other lines, if not more, than there was in this line.

Q. Did it ever happen in the making of a timber and stone entry that the payment for the land was not made at the time that the final proof was tendered by the entryman? A. Yes, sir, I think it did.

Q. Can you recall now and give us an instance of that kind? A. None that are in controversy.

Q. No, but at any time?

A. Yes. I recall a number, but I cannot recall their names. Whenever that is done, a nonalienation affidavit is required.

Q. Will you please explain to the Court what you mean by a nonalienation affidavit.

A. Well, that he has not sold, assigned or disposed of the land, and that he is still the owner thereof, since making his final proof.

Q. In other words, the requirement of the Department of the Interior is that when a payment for the land is delayed later than the time when the final proof is offered, an additional affidavit is filed by the entryman, setting forth that, between the time of his final proof and the time when the payment for the land is made, he has not sold, transfered or conveyed the land and that he is still the owner thereof?

(Testimony of Elmer E. Hershey.)

A. Yes, sir. That affidavit is attached to the proof and goes up with the proof as part of the proof.

Q. I will ask you to state if that is a part of the practice and the usual practice of the land office in cases of this kind? A. Yes, sir.

Q. I will ask you to state whether or no, in making these final proofs and in the examination of witnesses, you require each question to be answered as it is propounded to the witness? A. Yes, sir.

Q. I will ask you to state whether at any time you have ever found any proof that was not satisfactory to you as register of the land office at Missoula?

A. Frequently.

Q. On such occasions what is done by you in your official capacity as register of the land office?

A. Well, frequently there is quite an examination at the time, and if it develops positively that the proof cannot be made, why it is rejected, unless the proof is withdrawn; if the offer of making proof is not withdrawn we reject it.

Q. You have been called upon, have you, in the discharge of your official duties, to reject proofs frequently?

A. Oh, yes.

Q. I will ask you to state whether or not witnesses are required to testify with reference to a recent examination of the lands in making these final proofs?

A. Yes, sir; it must be at a late date; both the witnesses and the claimant.

(Testimony of Elmer E. Hershey.)

Q. How long prior to the time of making the final proof is it necessary that this examination shall be made?

A. I don't know as I can give the exact date, but to exceed six months have never been approved, and we require additional evidence, either by a re-examination of the land by party or by evidence by the other witnesses who are advertised to make proof.

Q. I will ask you to state whether you have ever called upon a witness to make a re-examination of the land, and if so, when and with what entry and what witnesses was it that you made this requirement?

A. I compelled Chauncey L. Griswold to go back and look at the land in one of the cases under consideration, but just which one I could not say. Well, I could not say really whether it was one of these cases, but it was during this time; there were so many cases which are not in controversy that were made during this same period that I could not say which case it was in. During his examination it appeared that he had not examined the land at a late enough date and I stopped him and told him that he was not a competent witness and could not testify in the case. He asked for advice as to what to do to become a competent witness, and I explained to him the necessity of examining the land at a late date, and that the party must either procure other witnesses upon the character of the land—one of the other two who had been published—or he should examine the land and could testify later. He stated that he could go and

(Testimony of Elmer E. Hershey.)

examine the land that day—this was early in the forenoon that he was in the office—and get back that night. He said it might be late, but that he was quite sure that he could get in that evening again. The land was up the Blackfoot, and he said he could drive to it. I remember seeing him coming into town about half past three, and he looked as if he had been up to the land. He came in the office before four o'clock and finished his testimony. The drive to the land, I should judge, would have been about fourteen or fifteen miles, maybe; that would make about a thirty mile drive.

Q. In order to direct your attention to particular entries, I will ask you to state if, in entry No. 1188, made by Albert Ehle, entry No. 1186, made by John B. Reeves and entry No. 1187, made by Robert Starkey, whether there was any delay in those particular entries, and what was done in order to complete the proof in those entries?

A. In those entries the proof was not taken on the day advertised, and by letter "C" of July 28th, 1900, "E. W. W." of the general land office at Washington, D. C., required an additional affidavit or explanation.

Q. Will you kindly read to the court now the letter to which you refer?

A. I did read it, and it is in the record.

Q. If it is in the record, we will pass that. Now, with reference to the entry of George Dildine, the final proof in that case, as I understand from your testimony—

(Testimony of Elmer E. Hershey.)

A. You may have been misled. The letter of the commissioner was not read into the record in this case; merely the affidavit was read.

Q. Well, I want the letter from the commissioner's office read into the record, showing the action of the general land office in cases of that kind, if you have it in your possession?

A. No, I have not got it in my possession, but I can state in general terms what it contains. I can get a copy of it.

The EXAMINER.—Well, there is no objection; let him state the terms.

Q. Well, just state them.

A. Well, it called my attention to the fact that the proof was not made on the day advertised, and stated that an explanation would be necessary and we were directed to advise the claimant and any other known party in interest of this requirement.

Q. I will ask you to state whether or not you had ever received other letters of a similar import from the commissioner's office?

A. We never received a letter from the commissioner's office in any case where final certificate and receipt had been issued by our office unless they used language to the same purport as in this case, that is, that we should notify the party and his assigns, if known, or notify the party and any other known party in interest; they always asked us to notify other parties, if known.

(Testimony of Elmer E. Hershey.)

Q. I will ask you to state what is meant by a combination notice?

A. We combine two or more final proof claimants in the same notice in order to save expense of publication.

Q. In what way does that save expense?

A. The newspaper does not charge as much; it lessens the composition; it does not take up so much space, and by advertising together that way it saves the claimant, I think, about one-third of the cost of publication.

Q. Then it is done solely for the purpose of saving expense? A. Yes, sir.

Q. With reference to the manner of making payment for the lands that are entered, I will ask you to state whose duty it is to receive the money and issue the receipt therefor? A. William Q. Ranft, the receiver.

Q. Did you ever at any time receive payment for any of the lands yourself? A. I did.

Q. Can you state to the court now in which cases it was that you received the money?

A. I can state a few cases.

Q. Please do so.

A. In the case of Elvira M. Hardy, John H. Hardy and Effie M. Kilburn, they paid me the cash on those entries.

Q. I will ask you to state whether or not Mr. Ranft was in the office at this time?

A. He was not; I never received money when Mr. Ranft would be in the office; I merely received it as an

(Testimony of Elmer E. Hershey.)

accommodation to him or to the parties, on account of his absence from the office.

Q. Won't you kindly go on and give to the court now the circumstances surrounding the Hardy entries at the time when they were made?

A. The two Hardys and Mr. Cobban of Chippewa Falls made proof on the same day. Mr. Cobban is not one of the cases in controversy. They were nonresidents of the State, and I was in some doubt about the legality of an entry made by a nonresident and I suspended action for, possibly, two hours investigating that question, and that fact, connected with the fact that they were strangers, possibly, impresses it more on my mind than anything else. I don't know hardly how I can account for it any other way, but I remember them very distinctly. They paid me the money, and investigated the matter and found that entries could be made by nonresidents, and placed the matter on record. In the Effie M. Kilburn case, she is the wife of Deacon Kilburn, and they are rather jolly people. I remember he was joshing her somewhat about what she was going to do with the land when she got it. He wanted to borrow some money of her—she had some money left in her pocket book, and she refused to loan it to him, and I remember their remarks and the circumstance in the office. I remember she made the remark that it was very easy to testify that he would not get any benefit from the entry of this land. It just impressed itself on my mind, that is all. I remember distinctly that she

(Testimony of Elmer E. Hershey.)

had some money left in her pocket-book afterwards, and he wanted to borrow some and she wouldn't let him have it. There might have been others, but I remember those two very distinctly; but I will say that in no case would a party pay money to me if Mr. Ranft was in the office, or in no case would I receive money if he was in the office.

Q. It has been testified to here that you were present at the time when Chauncey L. Griswold signed a certain affidavit in the office of Marshall & Stiff. I will ask you to state as a matter of fact whether you were present.

A. I was not present, and in fact, as a matter of fact I did not know anything about that affidavit until months afterwards—didn't know there was such an affidavit in existence.

Q. Now, referring to that question of the affidavit, can you remember about how long a time had elapsed since the last of the final proofs under the Timber and Stone Act had been made, that this affidavit was talked about or you heard of it?

A. My recollection of the matter is that the last entry of these in controversy was made in December, 1899.

Q. Of what year? A. 1899.

Q. And the affidavit?

A. I don't recollect the date of the affidavit, but it must have been in May, 1901, before I heard of it.

Q. How long a time after the completion of these final proofs on the land that is now in controversy was

(Testimony of Elmer E. Hershey.)

it before you heard any intimations that there was anything wrong about them?

A. I never heard them called into question until the 26th day of February, 1901.

Q. Prior to that time had you any notion or intimation that the entries had been wrongfully made in any way?

A. No, I never heard them called into question, and had no intimation that anyone ever questioned the legality of these entries. I will state that on that date it did not impress me that any fraudulent entries had been made, but they were questioned on that date. No evidence was given to me and nothing was said to me that would lead me to believe that any fraudulent entries had been made even on that date.

Q. I will ask you to state when it was that these rumors that you speak of concerning fraudulent entries commenced to be circulated in Missoula, with reference to the institution of a suit by Griswold against Cobban?

A. It was sometime after the suit had been commenced. The suit, I think, was commenced along about the holidays sometime, and following the holidays, the first that I ever heard anything was in February as I speak of.

Q. Do you remember who it was called you attention to it?

A. W. M. Draffin, the attorney for Griswold in his suit against Cobban.

Q. In what way did he call your attention to it?

(Testimony of Elmer E. Hershey.)

A. Well, he spoke about his investigations in the the case of Griswold vs. Cobban, and stated that what he was doing was in a professional way and what would be necessary for him to protect his client's interests. He didn't want me to feel that he was trying to injure me in any way, that our relations had been pleasant. I was somewhat surprised at such a remark. He stated that Cobban would get into trouble if he didn't settle with Griswold. I stated to him that if he knew of any fraudulent entries made or anything that was wrong it was his duty as a citizen of the United States to disclose it. He immediately replied that he did not put it on the grounds of a citizens, but only as an attorney, and would only do what was necessary to protect his client's interests. I told him: "Mr. Draffin, this is blackmail pure and simple, if you are endeavoring to collect a debt in this style." He seemed surprised, and asked me if I thought there was anything due Mr. Cobban, and I told him it didn't make any difference, but if he disclosed to me the evidence that any fraudulent entries were made, I would see to it that the proper parties were punished. He did not disclose anything. That was about all of the conversation and was in substance the conversation.

(By Mr. MAYNARD.)

Q. When was that?

A. The 26th day of February, 1901.

(By Mr. BICKFORD.)

Q. Then that would be something over a year after

(Testimony of Elmer E. Hershey.)

the last of these timber and stone entries had been made? A. Oh, yes, over a year.

Q. Now, I will ask you to state, Mr. Hershey, if you can give from your record, the date when each of the patents issued in these final proofs was issued by the general land office? A. Yes, sir, I can.

Charles C. Snider, cash entry 1141, was patented October 12th, 1900; Daisy L. Chattin, No. 1142, patented June 28th, 1900; John L. Deering, No. 1143, patented June 28th, 1900; George Dibline, No. 1147, patented June 28th, 1900; John Saleen, No. 1148, patented June 28th, 1900; Calvin Yarger, No. 1149, patented June 28th, 1900; Mary Eddy, No. 1150, patented June 28th, 1900; Matilda Eddy, No. 1151, patented June 28th, 1900; Thomas Rowe, No. 1152, patented June 28th, 1900; Herbert Eddy, No. 1154, patented June 28th, 1900; James W. Wheaton, No. 1155, patented June 28th, 1900; Matthew P. Dunham, No. 1156, patented June 28th, 1900; Frank B. Arey, No. 1157, patented June 28th, 1900; Abraham J. Jemison, No. 1156, patented June 28th, 1900; Oscar Muckenhirn, No. 1098, patented Dec. 30th, 1899; Stephen Tepper, No. 1110, patented June 28th, 1900; Harriet Bryant, No. 1111, patented June 28th, 1900; Clara Belle Mickels, No. 1113, patented Sept. 7th, 1900; Arnold Mickels, No. 1114, patented June 28th, 1900; Jacob F. Jemison, No. 1123, patented June 28th, 1900; Albert Jemison, No. 1124, patented June 28th, 1900; Recy M. Jemison, No. 1125, patented June 28th, 1900; Lavinia I. Gilman, No. 1126, patented June 28th, 1900; John C. Gilman, No.

(Testimony of **Elmer E. Hershey.**)

1127, patented June 28th, 1900; George P. Jemison, No. 1128, patented June 28th, 1900; William J. Eddy, No. 1129, patented June 28th, 1900; Eveline Jemison, No. 1136, patented June 28th, 1900; Sarah Yarger, No. 1137, patented June 28th, 1900; Emma Dildine, No. 1138, patented June 28th, 1900; Laura Roll, No. 1139, patented June 28th, 1900; Jenny Mize, No. 1167, patented June 28th, 1900; Zora Jemison, No. 1168, patented June 28th, 1900; Charles H. Jemison, No. 1169, patented June 28th, 1900; James Mize, No. 1170, patented June 28th, 1900; Dan McGillis, No. 1173, patented June 28th, 1900; Martha E. Wright, No. 1174, patented June 28th, 1900; Lizzie T. Catlin, No. 1175, patented June 28th, 1900; John G. Hendrix, No. 1176, patented June 28th, 1900; Elvina M. Hardy, No. 1177, patented June 28th, 1900; John H. Hardy, No. 1178, patented June 28th, 1900; Eliza A. Reeves, No. 1189, patented June 28th, 1900; Mary A. Starkey, No. 1190, patented June 28th, 1900; John Murtaugh, No. 1196, patented June 28th, 1900; Effie M. Kilburn, No. 1204, patented June 28th, 1900; Albert Ehle, No. 1188, patented Oct. 12th, 1900; John B. Reeves, No. 1186, patented Oct. 12th, 1900; Robert Starkey, No. 1187, patented Oct. 12th, 1900.

Q. Are those all of them?

A. Those are the forty-seven that we have been talking about since I have been here.

Q. Where do you obtain the data from which you give this evidence, Mr. Hershey?

(Testimony of Elmer E. Hershey.)

A. It is endorsed on the papers, on the back of the register's final receipt.

Q. From what source do you obtain the information to make this endorsement?

A. It is endorsed by the land office at Washington, D. C., the date of the approval, the division, the clerk approving it, the date of the patent and where recorded is endorsed upon the certificate.

Q. And this is all done in the land office at Washington, D. C.? A. Yes, sir.

Q. I will ask you to state what the practice is in the land office with reference to the attorneys of the respective parties having charge of the particular final proof or case, with reference to paying money and with reference to the filing of papers and the receiving of papers that are issued by the officers of the land office?

A. The attorneys recognized have full charge and control of the case, and are recognized as completely as the parties themselves. There is not an attorney practicing in the office that has not paid money into the office at some time or other, if he has had any practice to speak of, in different cases.

Q. I will ask you to state whether or not it is not usual for the attorney to pay the money instead of the entryman himself?

A. Yes, sir, if there is an attorney in the case, as a rule he handles the whole case.

Q. What is the practice of the land office and of the Department of the Interior with reference to the bor-

(Testimony of Elmer E. Hershey.)

rowing of money or the allowing of the borrowing of the money by the entryman in timber and stone entries, and are there any letters from the Department which empower the entryman to do so?

A. I could not say that there has been anything on that subject, further than the fact that it has been mentioned in cases like the Reeves and Starkey cases that I have read, and where it apparently met with the approval of the Department.

Q. State in full what those circumstances were.

A. Well, they explained the delay, and explained the fact where they were getting the money, and it would seem, almost from my letter and the affidavit that they furnished, that the Department must have known that they borrowed the money, because they practically said so in the affidavit.

Q. Did they not as a matter of fact state in the affidavit filed in the Department that they were borrowing money and had been disappointed in getting the money at the place or from the person from whom they intended to borrow it?

A. They did not use the word "borrow"—

Mr. MAYNARD.—I object to that because the affidavit is the best evidence.

Q. Have you that affidavit in your possession?

A. The affidavit was read and is in the record.

Q. From this affidavit, then, you were led to believe that the parties were borrowing the money, and it was

(Testimony of Elmer E. Hershey.)

so stated to the Department of the Interior, was it, or to the commissioner of the land office?

A. Yes, sir. More especially, in my letter to the Department you will find that I make mention of the fact that the party stated that he could go elsewhere and get the money. Since the new regulations are required, the question is asked whether or not—

(By Mr. MAYNARD.)

Q. Have you those new regulations here with you?

A. I have not; I can send down and get some. We can get them here at this land office. Our land office has not been made as pecial in this line; they are general to all of the land offices in all the States.

Q. You mean that they didn't discriminate against you, and make you hew closer to the line than anybody else? A. No.

(By Mr. BICKFORD.)

Q. Referring to the number of sworn statements of timber and stone entries that you have had in your office, I will ask you to state now how many of such statements were made in your office between 1899 and this time?

A. It would be pretty hard to guess at, and I didn't count them, but from the date of the first one here to the last one, including those two dates, there are forty-seven that are in controversy and there were fifty-nine others made that are not in controversy.

Q. How many of those were made before you, and

(Testimony of Elmer E. Hershey.)

how many of them were made before the receiver, Mr. Ranft?

A. Of these forty-seven in controversy, twenty-five of the sworn statements were sworn to before Mr. Ranft and twenty-two before me. Of the final proofs, twenty-eight were taken by Mr. Ranft and nineteen by me.

Q. I will ask you to state with reference to the indictments that you testified to in your examination in chief, how many of these people have been indicted?

A. I think it is thirty-seven, but I am not sure; it is thirty-six or thirty-seven. I have got the papers here and I can count them.

Q. Well, never mind; it is of no consequences; it is thirty-six or thirty-seven.

Mr. MAYNARD.—May I be permitted to ask the witness to read the names?

Mr. BICKFORD.—Yes, sir.

(By Mr. MAYNARD.)

Q. Just read them now.

A. Clara Belle Mickels, Arnold Mickels, Herbert Eddy, Zora Jemison, Charles H. Jemison, Mary Eddy, Abraham J. Jemison, John Saleen, Elvina Gilman, Laura Roll, James Mize, Elvina Jemison, Thomas Roll, Daisy L. Chattin, John L. Deering, William J. Eddy, Calvin Yarger, Frank B. Arey, James W. Wheaton, Charles C. Snider, George Dildine, Matthew P. Dunham, Albert Jemison, Oscar Muckenhirn, Mary A.

(Testimony of Elmer E. Hershey.)

Starkey, John B. Reeves, Eliza A. Reeves, John H. Hardy, Mary Bryan, John Murtaugh, Dan McGillis, Robert Starkey, Albert Ehle, Jacob F. Jemison. That is all.

(By Mr. BICKFORD.)

Q. How many of these indictments have been dismissed, if you know?

A. I understand that one of them has.

Q. Against whom? A. Albert Jemison.

Q. At any time when these final proofs were being made at your office, has there ever been any special agents of the Government present, with whom you advised, or with whom the officers of the land office advised with reference to the passing of the same?

A. Yes, sir.

Q. What special agent was it?

A. Inspector A. H. Greene; who has been inspector for some twenty years.

Q. What occurred at that time, if you know?

A. He was present, I am informed, while I was absent on leave some time in October, 1899.

Q. What particular entry was under consideration at that time, if you know?

Mr. MAYNARD.—I object to this as entirely incompetent and pure hearsay.

(By Mr. MAYNARD.)

Q. You don't know anything about this except as you were told? A. Only as I was told.

(Testimony of Elmer E. Hershey.)

(By Mr. BICKFORD.)

Q. I will ask you if you know what case was under consideration at this time? A. One of the Jemisons.

Q. You don't know which one?

A. No. It was one of the women, so I was informed, and she did not understand the questions, and it was hard to make her understand what was required of her.

Q. Well, I will ask you, without going into details, if you know what the duties of these special agents may be?

Mr. MAYNARD.—Objected to as immaterial and irrelevant.

A. They inspect our offices and instruct us on the many points what to do; in fact we look to them for advice. They are supposed to know the law and to advise us, and frequently they do advise us. We advise with them as to the proper method of procedure, and if they don't understand what to do they take the matter up, and the Department then will instruct us on those subjects.

Q. Have they any dealings with reference to the investigation of cases of entries where there may a question arise concerning the entries?

A. Only as far, possibly, as it would affect our office. They are more inspectors to see that we do our duty than they would be to go out and examine fraudulent entries, that is, such inspectors as Mr. Greene.

Q. Well, supposing they should find in the conduct of

(Testimony of Elmer E. Hershey.)

your office that something was being done contrary to the law and to the rules of the Department of the Interior, would it be their duty to call your attention to such matters?

A. Oh, most assuredly; they would call our attention to it immediately, and it would be the subject of a report. I want to say that Mr. Greene, on this trip, gave us a very complimentary report; we got a letter from the commissioner so stating, at least, that he had found things in a very satisfactory condition.

Q. Then it is his duty to look into any matter or thing connected with your office wherein the law was not being observed?

A. Yes, but, as I said, more especially affecting the officials of the office than it would be to the entryman. They wouldn't look up a fraudulent entry, but would see that we were doing our duty.

Q. With reference to the testimony given by you concerning Lynde S. Catlin, a clerk in your office, I will ask you to state whether or not Mr. Catlin ever received any of the money paid on these final proofs?

A. No, sir; the money was always paid to Mr. Ranft, or in his absence I acted for him. Mr. Catlin was nothing but a stenographer in those days.

Q. Of what did his duties consist after the time when he became a regular clerk in your office in the manner you have described?

A. Well, after he became chief clerk, he, to a large extent, assumed the duties which Mr. Ranft had been

(Testimony of Elmer E. Hershey.)

performing. That was long after anything in controversy, though, after any of these entries in controversy had been made.

Q. I will ask you to state whether at any time he had any duty to perform with reference to passing upon the sufficiency of proofs or the issuing of final receipts or any other matter or thing pertaining to or belonging to the duties of the register or receiver of the land office?

A. None whatever; he didn't attempt to do it.

Q. I will ask you to state as a matter of fact whether he ever undertook to transcribe the testimony in any case?

A. I think that the record shows that in the case of one or two witnesses there he took down their testimony. That was the day that I speak of, that Mr. Greene was present. It was a very busy day in the office, and I was absent and Mr. Catlin assisted Mr. Ranft and in a few of those cases—I notice one or two of the witnesses' testimony is in the handwriting of Mr. Catlin. Of course, they were sworn to before Mr. Ranft.

Q. Do you at this time recall any matter or thing in the conduct of your office with reference to final proofs, which has been neglected either by you or by the receiver of the land office?

A. No, sir; the proofs were regular in every shape and form. I know of nothing that could be done different in any particular to what was done.

Redirect examination waived. Witness excused.

ELMER E. HERSHEY.

(Testimony of Albert F. Muchmore.)

Subscribed and sworn to before me this 15th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

ALBERT F. MUCHMORE, a witness for complainant, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. Mr. Muchmore, where do you live?

A. I live near Ovando in Montana.

Q. How long have you lived there?

A. Twelve or thirteen years.

Q. How far from Ovando?

A. About three miles.

Q. What is your business? A. I am a farmer.

Q. Do you live on the place now?

A. Yes, sir; that is my home.

Q. Are you living there?

A. At the present time, yes, sir.

Q. How long have you been living there?

A. Well, that has been my home for the last seven or eight years. I am away from there at time, doing contract work and working for wages at times.

Q. As day laborer? A. Yes, sir.

Q. Who lives on the place besides you?

A. My father and mother and one of my brothers live there.

Q. How large is the place, Mr. Muchmore?

(Testimony of Albert F. Muchmore.)

A. We have about eight hundred acres of land.

Q. In whom is the title; who owns it?

A. I think the deed is made out to my father and myself and one of my brothers.

Q. Made out to all three of you?

A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. What do you mean by that?

A. Well, the deed was made out to us.

Q. Did you sign it?

A. Well, I couldn't say now whether I did or not.

Q. Are you a married man? A. No, sir.

Q. How old are you? A. Twenty-six years old.

Q. Do you spend much of the time on the farm yourself?

A. I am there about half of the year, I think.

Q. During the winter time or summer?

A. Occasionally I am there in the winter.

Q. Well, what half of the time do you spend on the farm?

A. I am there during the haying and harvest season.

Q. During the busy season?

A. The busy season of the year, yes, sir.

Q. How much of this land is under cultivation?

A. About three hundred and fifty acres, I should think.

Q. Are you any relation to Mr. Jemison?

A. No, sir.

(Testimony of Albert F. Muchmore.)

Q. Not connected with him by marriage or in any way? A. No, sir.

Q. Where had you lived before moving to this place near Ovando? A I lived in Pioneer, Montana.

Q. With your father? A. Yes, sir.

Q. Have you been doing anything except working on the farm and as day laborer at any time in your life?

A. I have worked, taken contracts at different times to do work.

Q. What kind of contracts?

A. Lumber contracts and haying contracts and such work as that.

Q. How many lumber contracts?

A. Twice we put in logs on contract, I think.

Q. With whom? A. My brother and I.

Q. With whom was the contract made?

A. I contracted with R. F. McLean at one time and with W. A. Griffith, I think.

Q. The contract would be to sell the trees and deliver them at the river bank, is that it?

A. Yes, sir.

Q. On whose land would it be that you would fell the trees?

A. I don't know. The timber belonged to the Blackfoot Milling Company. I don't know whether it was railroad or Government land or where it came from now.

Q. Were the people that you made the contract with representing the Milling Company?

A. Yes, sir.

(Testimony of Albert F. Muchmore.)

Q. In other words, then, you were to cut trees down on land that you supposed belonged to this company and haul them to the river bank? A. Yes, sir.

Q. What else did you do besides that; what other contract did you say you had?

A. We have put up hay on contract at different times.

Q. For other people? A. Yes, sir.

Q. Just look at that paper, Mr. Muchmore, and the signature at the bottom. Is that your signature?

A. I think it is.

Mr. MAYNARD.—I show the witness serial number 81, a sworn statement.

Q. From this statement it appears, Mr. Muchmore, that on the 6th of June, 1899, you came here to Helena and entered the land described in this statement, being the south half of the northwest quarter and lots No. 3 and 4 of section 4, township fifteen north, range twelve west. Do you remember of having come here to Helena?

A. Yes, sir.

Q. Do you know where this land is?

A. Yes, sir.

Q. How far is it from your home?

A. It is about six miles, I think.

Q. You subsequently made the final proofs in the case? A. Yes, sir.

Q. And who were your witnesses, do you remember?

Mr. BICKFORD.—We object to that because the rec-

(Testimony of Albert F. Muchmore.)

ord itself is the best evidence of the fact sought to be shown.

Mr. MAYNARD.—I admit that, but I thought we would call it out right here.

Mr. BICKFORD.—Just read it to him. We won't object on the ground that it is leading.

Q. Do you remember who your witnesses were?

A. No, sir, I don't remember all of them. I think my brother acted as one witness, and I couldn't say who the others were.

Q. Henry C. McNally, do you know him?

A. Yes, sir.

Q. Who is he?

A. He is a resident of the Blackfoot valley, a farmer there.

Q. And Guy W. Muchmore is your brother?

A. Yes, sir.

Q. They seem to be the two witnesses that came with you at the time of making your final proof, and this final proof appears to have been made the first day of September, 1899. Did you, after you made your final proof, get a receiver's final receipt? A. Yes, sir.

Q. And what did you do after that with the land, Mr. Muchmore?

A. Some time after receiving this receipt we sold it, and I sold my claim.

Q. To whom?

A. To R. M. Cobban, I think, through Jakway & Faust.

(Testimony of Albert F. Muchmore.)

Q. That was a few days after you received the final receipt, was it not? A. Yes, sir.

Q. Did anyone else convey to Mr. Cobban at the same time with you?

A. My brother and I, I think, sold at the same time

Q. That was Guy? A. Yes, sir.

Q. Who were present at the time?

A. I don't remember.

Q. Was it at the store of Jakway & Faust at Ovando?

A. Yes, sir, it was at the store. There were others in the store, but I don't remember who they were now.

Q. Did you see Jakway & Faust before you came up to Helena to make your final proof?

A. Yes, sir, I saw them.

Q. Where?

A. At their store—or I saw Mr. Faust at their store. Mr. Jakway does not stop at the store there.

Q. From whom did you receive the money that you paid at the receiver's office, Mr. Muchmore?

Mr. BICKFORD.—Objected to as irrelevant and immaterial.

A. I received it from the firm of Jakway & Faust.

Q. And Guy, too?

Mr. BICKFORD.—The same objection to that.

A. Yes, sir.

Q. When did you receive the money?

A. A short time before we came out to make our final proof.

(Testimony of Albert F. Muchmore.)

Q. Was it not on the way out? A. No, sir.

Q. How long before you came here?

A. A day or two before, I think, we went there to the store for the purpose of getting the money.

Q. How much did you receive?

A. I don't remember now to the dollar; it was drawn out in a check.

Q. A check for both payments? A. Yes, sir.

Q. Do you know was it Jakway & Faust's check?

A. Yes, sir.

Q. On the bank in Missoula?

A. I think it was drawn on a Helena bank.

Q. Did you receive enough money to make all of the payments and pay all the expenses from Jakway & Faust, and came here and made your final proofs and got your receiver's receipt, and then, on the 10th of September, the date of the deed, you deeded to R. M. Cobban in Jakway & Faust's store?

Mr. WALSH.—Objected to as leading.

Q. That is what you testified to, is it not?

A. No, sir.

Q. Then what change do you desire to make?

A. We received the money to make this final proof on the land from Jakway & Faust.

Q. Yes, that is what I mean. That would be upwards of a thousand dollars, would it not?

A. Well, I think the check was drawn out for twelve hundred dollars, and I think my uncle had borrowed money from them for the same purpose, and I think the

(Testimony of Albert F. Muchmore.)

check was drawn for the amount to cover the three proofs, and my uncle carried the check here.

Q. What is your uncle's name?

A. Oliver E. Muchmore.

Q. Did Oliver, your uncle, deed at the same time that you and your brother did?

A. He proved up here at the same time at the land office.

Q. And did he deed to R. M. Cobban at Faust's store at the same time you and your brother did?

A. I don't know; I think not.

Q. Before or after? A. I couldn't say.

Q. How much did you get yourself, Mr. Muchmore, for what you did?

Mr. BICKFORD.—We object to the form of that question.

Mr. WALSH.—He does not say that he got anything for what he did.

Q. After you had conveyed your land to Mr. Cobban, as you have now testified, what did you receive, if anything?

A. I don't remember just what I sold for now; it was six or seven hundred dollars; the deed states, I think.

Q. I know, but the question is, how much money did you yourself receive?

A. I was given a credit at Jackway & Faust's for the amount of the deed; I forget just what it was.

(Testimony of Albert F. Muchmore.)

Mr. BICKFORD.—I think the deed would be the better evidence, if he should state that the consideration mentioned in the deed was the true consideration for the conveyance.

Q. You say you received a credit at Jakway & Faust's for your deed? A. Yes, sir.

Q. And you now say that you don't know how much that credit was?

A. I don't remember just what it was; it was six or seven hundred dollars. That was the method that we were doing business with Jakway & Faust at the time. You might call it a banking business. They handled what money we had, and we were doing business with them that way. When we received money we turned it in there into their bank and were given credit for it, and as a matter of fact, as they were doing the business with Cobban, the money was turned in there and placed to our credit.

Q. Placed to our credit—who do you mean by our credit?

A. I mean my brother's and mine; we were doing business together as a company.

Q. What is the name of the company?

A. Well, we are known, or do business as Muchmore Bros. & Co., although it is not an incorporated company.

Q. How many brothers are there of you?

A. Three.

Q. Yourself and Guy, and what is the other brother's name? A. Orville J. Muchmore.

(Testimony of Albert F. Muchmore.)

Q. So that this credit of about six hundred dollars, as you think—you don't know—was extended to you three brothers? A. Yes, sir.

Q. And that was the consideration which you received for your entry, and your brother's entry and your other brother's entry?

A. No, sir, that was the consideration for this timber claim of mine.

Q. That is what I say, which you sold to Mr. Cobban? A. Yes, sir.

Q. Who first spoke to you, Mr. Muchmore, about making this entry?

A. I think my brother mentioned it to me first.

Q. Which one? A. Guy.

Q. How long before you did in fact make the entry?

A. A short time; perhaps two weeks or something like that.

Q. What was the fact; what did he state about it?

Mr. BICKFORD.—We object to that as being hearsay.

A. I think he told me that if we wanted a timber claim we had better take it up, as the timber was being taken up there. We had been thinking some time before that of taking a timber claim, and had talked of it in fact, and I think Mr. Faust had told him or sent word to him that if we wanted a claim we could take it up, and he told me.

Q. Mr. Faust is of the Jakway & Faust firm?

A. Yes, sir.

(Testimony of Albert F. Muchmore.)

Q. That were doing business for Mr. Cobban at Ovando? A. I don't know.

Mr. WALSH.—We object to that. The witness has not said that Faust was doing business for Cobban.

Q. I understood you to say that he did?

A. No, sir, I didn't.

Mr. WALSH.—He said simply that he sold a claim to Mr. Cobban through Mr. Faust.

Mr. MAYNARD.—That is the same thing.

Q. How did it happen that you made this entry?

A. Well, inasmuch as we wanted a claim, and as the timber was being taken there, we made these entries.

Q. Who went with you at the time that you went to look the land up?

A. I think my brother and my uncle were with me.

Q. How long were you on the land?

A. I don't know the length of time; we were on it long enough to follow the lines out and look it over and make an estimate of the timber.

Q. Well, give us your best judgment: an hour?

A. Well, I should judge two hours.

Q. On how many of these claims did you spend the two hours? A. On this one claim.

Q. On your claim? A. Yes, sir.

Q. Did you spend any time on that day in looking up the other claims of your brother and uncle?

A. I think we did.

(Testimony of Albert F. Muchmore.)

Q. Did you spend about the same length of time on the three claims?

A. I think we looked over my brother's claim also, and perhaps were there the same length of time, two hours.

Q. And then after spending two hours on your claim you went home, and then I understand you that you went with your brother and uncle down to Ovando and your uncle got the lump sum in one check for the three claims, and you came here to Helena and made the entries?

A. No, sir.

Mr. WALSH.—We object to that as leading.

Q. What is it? A. No, sir; we did not.

Q. What is there wrong about that?

A. I don't think we went to Jakway & Faust's when we came down from the timber there at all. My recollection is that we went home, and a few days after we came out here, a day or two or something.

Q. But in the meantime, after you had gone home, and before you came up here, your uncle had received this check on a Helena bank, a lump sum aggregating the three claims? A. No, sir.

Q. How much had he received?

A. He had received nothing to my knowledge.

Q. Didn't you testify that he received a check on a Helena bank?

A. At the time we proved up he did; yes, sir.

Q. You didn't receive the money when you first came here you had no occasion to use money at that time, did you?

(Testimony of Albert F. Muchmore.)

A. I think we paid ten dollars for making our filing.

Q. Whom did you receive that from?

A. I don't know who I received it from; I had the money.

Q. Was it your own money? A. Yes, sir.

Q. You didn't borrow it from Jakway & Faust?

A. No, sir.

Q. Did you see to the publication in the paper?

A. Mr. McNally, I think saw to having it published. I think we published four or five claims or entries at the same time and I think Mr. McNally seen to that business, in fact I am sure he did.

Q. Did you ever see the patent that was subsequently issued upon your entry? A. No, sir; I did not.

Q. Did you have anything to do with the land at any time after you went up there and spent two hours on it, except to convey it to Mr. Cobban?

A. I didn't do anything with the land, no.

Q. You were indicted by the grand jury for making a fraudulent entry, were you not, on this entry?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent, and because the record is the best evidence.

A. Yes, sir; I was.

Cross-examination.

(By Mr. WALSH.)

Q. Mr. Muchmore, how long have you been connected, either directly or indirectly, with the logging and lumbering business?

(Testimony of Albert F. Muchmore.)

A. Well, for six years, perhaps.

Q. You have lived in the neighborhood of Ovando for about that period? A. Yes, sir.

Q. And to what extent were you familiar with the ground that you entered as timber and stone claim prior to the time that you made the examination of it for the purpose of making a filing?

A. In what manner was I familiar with it?

Q. Yes, had you become familiar with it, and how?

A. Yes; I had looked it over with a view to logging it, and from that fact I was pretty well acquainted with the lay of the ground and the timber that was on it.

Q. When was this?

A. That was before I filed on the ground.

Q. Did you ever do any hunting in that neighborhood?

A. Yes, sir.

Q. During what period had you been in that neighborhood hunting, about how far back?

A. I think we were hunting there that spring; I don't know whether it was before or after we had come out here to Helena.

Q. Now, you say that for some time prior to the time that your brother talked to you about this matter you had been contemplating taking up a timber claim?

A. Yes, sir.

Q. How long had you had that matter in hand prior to that time?

A. For a couple of years, I should judge.

Q. Prior to the time that you made the filing on the

(Testimony of Albert F. Muchmore.)

land, did you have any conversation with anybody concerning the matter of taking up the claim besides your brother?

A. I think I had talked with no one except members of my family; I think I talked it over with father.

Q. Now, who came to Helena with you at the time that you made the filing?

A. My brother and my uncle and his wife, I think, came together.

Q. And the expenses of that trip you say that you paid out of your own money? A. Yes, sir.

Q. Also the land office fees? A. Yes, sir.

Q. Now, Jakways & Faust, as I understood, gave a check to your uncle for twelve hundred dollars which was to pay for the purchase price of three claims, your own, your brother's and your uncle's? A. Yes, sir.

Q. What other money, if any, did you get from Jakways & Faust in connection with this entry?

A. We got no other.

Q. That was all? A. Yes, sir.

Q. From what money was the remainder of the expense of making that entry paid, Mr. Muchmore?

A. From my own money.

Q. Your own funds? A. Yes, sir.

Q. How did it come about that you got this money from Jakways & Faust to pay for the land?

A. We hadn't the money of our own to pay for this land, and as a matter of course we had to borrow it. We had been borrowing and using money from Jakways &

(Testimony of Albert F. Muchmore.)

Faust for running our business, in fact at that time we were in a contract with them hauling freight, and we got money from them to pay our expenses, and at the time I don't know whether we owed them or whether we had a credit with them, but it didn't matter. Whenever we wanted money we went and got it. We talked with Mr. Faust about getting money for this timber claim and he said he could let us have it and we took it, borrowed it.

Q. You said something to the effect, Mr. Muchmore, that you did something in the nature of a banking business with Jakways & Faust; what do you mean by that?

A. Well, just simply that when we received money from a contract or from any work or selling stock from the ranch or anything of that kind, we would turn the check in there and they collected it and held the money there or placed it in their bank account or at the bank to their credit, and when we needed money we would draw on them for the money.

Q. So whenever you got a check of any kind, you turned it in there and they gave you credit on your account? A. Yes, sir.

Q. And when you wanted money for any purpose, you would go and get it from Jakways & Faust?

A. We would simply go there and ask them for that much money and if at times they hadn't the money, they would give us a check if they hadn't the cash on hand.

Q. Now, I wish you would state what agreement or arrangement of any kind you had with Jakways & Faust or anyone prior to the time you made this entry or prior

(Testimony of Albert F. Muchmore.)

to the time that you made the filing originally, or prior to the time that you made final proof and your certificate was issued, to the effect that you would convey this land to anybody.

A. We had no words or bargain with anyone; at least I had none.

Q. Did you have any talk with anyone to that effect?

A. No, sir. I talked of selling the land to the manager of the Blackfoot Milling Company. I had no intention of selling it at the time; I merely asked him what he would pay for logs landed on the banks of Montour Creek.

Q. When was this that you had this talk with him?

A. This was after I had filed on the land.

Q. And after you had made final proof?

A. Yes, sir.

Q. And what was the purpose that you had in mind in opening up this conversation with him?

A. I wanted to contract for putting in logs there, and had in view selling this timber or these logs at some future time, if they would give enough for logging the timber into the stream there.

Q. And when you say at some future time, what time do you mean with reference to the time that you would get your final certificate for the land?

A. Well, I had no connection—my views at that time had no connection with the final proof on my land.

Q. What I want to know is whether you contemplated, at the time you were talking with this gentleman, logging

(Testimony of Albert F. Muchmore.)

this timber or selling it to the Blackfoot Milling Company or anybody else before you made your final proof?

A. I had no idea of selling it at that time, no, sir.

Q. Now, you subsequently, it appears, sold the land to Mr. Cobban? A. Yes, sir.

Q. And the negotiations for the sale were had with Jakways & Faust, you said? A. Yes, sir .

Q. And the price was agreed upon between you at which you would sell the land? A. Yes, sir.

Q. And, as I understand you, you obtained a credit with Jakways & Faust on your account with them for whatever was agreed upon between you?

A. Yes, sir.

Q. Do you remember whether the true consideration was as stated in the deed or not?

A. I don't remember what the consideration was.

Q. And you cannot say whether the exact amount you received was the amount stated in the deed or not?

A. No, I cannot.

Q. Now, do you recall about how long after you had made the final proof it was that you made the transfer?

A. No, I can't tell exactly how long it was after.

Mr. MAYNARD.—The record shows that it was twelve days.

Q. I would like to know from you what negotiations, if any you had with anybody, intervening the time that you obtained the final receipt and the time that you made the conveyance to Mr. Cobban, for the sale of this land to them.

(Testimony of Albert F. Muchmore.)

A. I don't quite understand your question.

Q. The question was whether you had any negotiations with anyone else between the time that you got your final receipt and the time that you conveyed to Mr. Cobban about disposing of the land to them?

A. No, sir; I had not.

Q. Now, did you get information from the gentleman that you spoke of as connected with the Blackfoot Milling Company as to the amount that you could realize on the timber on the land in case you logged it and put it i the stream?

A. I got an idea. He stated that he would give—

Q. I didn't care about the details of what he stated, but if he said to you what he would be willing to do with you, what kind of contract he would make with you?

A. Yes, sir.

Q. Why did you eventually sell to Mr. Cobban rather than enter into a contract for the purpose of logging the place up on a contract with the Blackfoot Milling Company?

A. I didn't think the price offered by that company was sufficient for logging that timber to the stream.

Q. And you thought it would be more profitable to you to sell than to contract to put the logs in the stream, is that it? A. Yes, sir.

Redirect Examination.

(By Mr. MAYNARD.)

Q. When you came up here with your brother to make your final proofs, and at the time that you got your re-

(Testimony of Albert F. Muchmore.)

ceiver's final receipt, you had talked it over with him, had you not, or he had spoken to you about transferring this particular land to Mr. Cobban?

Mr. BICKFORD.—Objected to as irrelevant and immaterial and also as leading.

A. I don't remember of having any conversation to that effect; we might have.

Q. You might have had?

A. Yes, sir; but I don't remember it.

Q. Is it not a fact that you expected and had planned, previous to your coming here to make your final proofs, as soon thereafter as possible, or within a few days after the final proof, to convey, as you did, to Mr. Cobban?

Mr. WALSH.—Objected to as irrelevant, immaterial and incompetent, and also as leading.

A. No, sir, we had not.

Q. Nothing had been said by you to your brother, or your brother had said nothing to you, or your uncle had said nothing to you about conveying to Cobban after your coming here?

Mr. BICKFORD.—The same objection.

A. Not to my knowledge or memory. We may have talked about selling to one party or another, I don't know; I don't remember of having heard anything said about it.

Q. What did you expect to do with this land that you had entered and was about to make final proof on?

(Testimony of Albert F. Muchmore.)

Mr. WALSH.—Objected to as incompetent, irrelevant and immaterial.

A. We expected to sell it at some furtue time.

Q. Didn't you know at the very time that you came here, that you were to sell it to Mr. Cobban?

Mr. WALSH.—Objected to as leading.

A. No, sir.

Q. You have sworn to Mr. Walsh that you had made no negotiations with anybody else after you made the final entry, and the fact is that within twelve days after you made the final entry you did convey to Mr. Cobban. How did you happen to do that if you had not before this time had some arrangement with Mr. Cobban, or with Mr. Faust, his agent, that you would?

Mr. BICKFORD.—We object to the interpolation of the words "Faust, his agent" in the question.

Mr. WALSH.—We also object that it is an effort to cross-examine his own witness.

Q. Can you answer the question?

Mr. WALSH.—The same objection.

A. How it came that we sold to Mr. Cobban?

Q. Yes, within twelve days after you made your final proof?

A. We sold to him because he was buying timber, I suppose, in that section of the country at the time.

Q. You knew he was buying timber in that section of the country before you made your entry in the first place, did you not?

(Testimony of Albert F. Muchmore.)

Mr. BICKFORD.—Objected to as immaterial.

A. We didn't know it before we made the entry, no.

Q. You hadn't heard of it?

A. No, sir. I don't think he had bought any timber there prior to that time.

Q. Didn't you know of the fact that he had agents in that section of the country notifying people that he would buy these timber claims?

A. We heard of it, but I don't know whether it was before or after making this filing.

Q. Who did you hear it from?

A. I couldn't say now.

Q. What did you hear?

A. I don't know just what we heard. It created quite an excitement there, the rush for timber, taking up so many timber claims, after they began filing on them, and it was reported that Cobban would buy the timber, and the Blackfoot Milling Company also bought timber in there.

Q. What did you yourself hear in regard to what Mr. Cobban would pay for these claims?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent, and as hearsay.

A. I believe we heard that he was offering one dollar a thousand for the timber, that is, within a certain distance of the water, drivable streams.

Q. Didn't you hear and know by report through that entire neighborhood that he was taking up these claims

(Testimony of Albert F. Muchmore.)

after final proof had been made and paying the entrymen one hundred dollars and expenses?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent, also as hearsay and as leading.

A. I knew nothing of it, no, sir, at that time.

Q. When did you hear of it?

A. Well, I suppose I heard of it during that summer sometime. I can't say what date or where or how I heard it.

Q. But as a matter of fact you did hear it during the summer?

A. I think I heard something to that effect, yes, sir, that he would or was giving one hundred dollars for a claim.

Q. And is it not a matter of fact that, after you heard that, you thought that you would take up a claim and make that money yourself?

Mr. WALSH.—Objected to as leading, and also as cross-examination of the Government's own witness.

A. No, sir, I didn't know anything about that at the time I filed.

Q. But you say it was sometime in the summer?

A. Yes, sir.

Q. It would be long before you made your final proof, would it not?

A. It perhaps was before I made the final proof.

Q. So that, when you came here to Helena to make your final proof, you knew as a matter of fact that you could dispose of this particular entry to Mr. Cobban and

(Testimony of Albert F. Muchmore.)

get one hundred dollars and expenses over and above what you paid, did you not?

Mr. WALSH.—Objected to as immaterial.

A. I knew I could get one dollar a thousand for this timber from either Mr. Cobban or the Blackfoot Milling Company.

Q. And it is a matter of fact that you did not have the money of your own to make this purchase with?

Mr. WALSH.—Objected to as leading, as cross-examination of the Government's witness, and as immaterial and irrelevant.

A. I have stated that I hadn't the money to prove up, that I borrowed it; yes, sir.

Q. And the money that you did pay came from Mr. Faust, to whom you afterwards delivered the deed to Mr. Cobban.

Mr. WALSH.—Objected to because it has already been testified to, and because it is leading.

A. The money came from Mr. Faust; yes, sir.

Q. And then, as a matter of fact, within twelve days after you made the final proof, you did convey this land to Mr. Cobban at Mr. Faust's store?

Mr. WALSH.—Objected to as not proper redirect; it has been gone over before; it is leading, and is an attempt to cross-examine counsel's own witness.

A. I don't remember the exact date. You say the deed says twelve days. I sold it a short time afterwards at the store there.

(Testimony of Albert F. Muchmore.)

Q. And without making any effort, as you testified to Mr. Walsh to convey this land to any other person?

Mr. WALSH.—The same objection.

A. Yes, sir. I knew what I could do with the other company, and I sold it to Mr. Cobban.

ALBERT F. MUCHMORE.

Subscribed and sworn to before me this 14th day of February, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Whereupon a recess was taken until 2 o'clock.

Helena, Montana, Thursday, Dec. 19th, 1901, 10 A. M.

Hearing resumed pursuant to adjournment.

LEWIS A. WELLS, after being duly sworn as a witness for complainant, testified as follows:

Direct Examination.

(By Mr. MAYNARD.)

Q. What is your name, please?

A. Lewis A. Wells.

Q. Are you a married man? A. I am.

Q. Where do you live?

A. I live nine miles from Ovando; that is where my homestead is.

Q. What is your business?

A. I am a butcher and rancher.

Q. How long have you lived up there?

A. Sixteen years last November.

(Testimony of Lewis A. Wells.)

Q. Do you know Mr. Chauncy L. Griswold, who was sworn here? A. I do.

Q. How long have you known him?

A. I couldn't state the exact number of years I have known him, but I have known him since he came on to the Blackfoot and acquired that stopping place at Clearwater.

Q. How far was your home from Clearwater?

A. Why, fifteen or seventeen miles; I couldn't say exactly the distance.

Q. State the character of your acquaintance with Mr. Griswold, is it a slight acquaintance or a very intimate one? A. It is quite intimate.

Q. Did you hear the testimony of Mr. Thomas B. Bryan in this case? A. Yes, sir.

Q. State as to whether or not you were at Clearwater at the time claimed by him? A. I was.

Q. At Mr. Griswold's house? A. Yes, sir.

Q. Did you at that time and place have a conversation with Mr. R. M. Cobban? A. I did.

Q. Where did that conversation take place?

A. It took place between the barn and the hotel, in front of his buggy or barouche.

Q. Whereabouts did you say it was?

A. It was between the barn and the house in front of his buggy or barouche or whatever it was.

Q. Who was present?

A. Mr. Cobban and myself.

Q. Are you able to state as to whether or not pre-

(Testimony of Lewis A. Wells.)

vious to this time he had entered into a contract with Mr. Griswold?

Mr. BICKFORD.—We object on the ground that it is irrelevant and immaterial.

A. Only from hearsay; not from my own positive knowledge.

Q. Whom did you hear it from?

A. Mr. Griswold.

Q. Had you talked the matter over with him?

A. Yes, sir.

Mr. BICKFORD.—We move to strike out the answer wherein he says he knows it only from talking with Mr. Griswold.

Q. You state that you did have a conversation with Mr. Cobban. Please state fully and exactly as you can just what the subject matter of that conversation was and what you said to him and what he said to you.

Mr. BICKFORD.—We object to all testimony with reference to conversations between the witness and Mr. Cobban, on the ground that the same is irrelevant and immaterial, and also because it is hearsay.

A. The conversation related to timber claims, and was to this effect, that I didn't favor taking timber lands under this Stone and Timber Act, because of the crookedness it required to acquire a title to the land; that I was in favor of taking this land as scrip land, to use forest reserve or lieu land scrip on it. I talked the matter

(Testimony of Lewis A. Wells.)

over with Mr. Griswold, and I had told Mr. Griswold that the character—

Mr. WALSH.—We object to the witness telling anything that he said to Mr. Griswold on the ground that it is not responsive to the question and that it is immaterial, irrelevant and incompetent.

Q. I asked you what you said to Mr. Cobban?

A. I told him that it would require a man to commit perjury to acquire a title to that land, taking it under the Stone and Timber Act. Mr. Cobban said that if those people there could not be depended on, that he had over two hundred applicants to take the land under the Stone and Timber Act, and the people were stopping him on the corners of the streets of Missoula, making applications, or filing their applications for stone and timber claims with him; that he could get all the people that he wanted to take those claims for one hundred dollars, and some of them offered to take it for less, even fifty dollars per claim.

Mr. BICKFORD.—We move to strike out all the answer of the witness, on the ground that it is hearsay, and on the further ground that it is irrevelant and immaterial, and not responsive to any issue in the case.

The WITNESS.—Mr. Cobban quit short in his conversation with me when I told him that I didn't think those people could be depended on there, and it would compel them to commit perjury to acquire the land; he said there was plenty of people willing to take the chances.

(Testimony of Lewis A. Wells.)

Q. Did you afterwards meet Mr. Cobban at Ovando?

A. I did.

Q. When was that?

A. Well, I couldn't state the exact time nor the time of Mr. Cobban's visit there.

Q. You may state as to whether or not at that time and place you had any conversation with him?

A. I did.

Q. Give us just the substance of that conversation?

Mr. BICKFORD.—We object to the conversation that is inquired concerning, for the reason that the same is irrelevant and immaterial, and also hearsay.

Q. I don't care to go into the details; I just simply call for the substance of that conversation.

A. Mr. Cobban wanted to know if I was able to prove up on the claim that I had filed on. I told him I didn't know. He said he would like to get that claim—it was a very valuable claim—and he would like to be sure that he could have the claim, and if I hadn't the funds to prove up on with, he would advance them, only he wanted a guarantee or assurance that I would transfer the claim to him when I proved up. I told Mr. Cobban that I wasn't selling horses until I had a title to them; in other words, that I would not sell anything that I did not own.

Q. As to whether or not at that time and place you again spoke to him about the nature of the crime that he was committing.

(Testimony of Lewis A. Wells.)

Mr. BICKFORD.—We object to that, because it is leading; also because it is irrelevant and immaterial.

A. I told Mr. Cobban that to accept of his money to make that proof, or anybody else's money, to give them a lien on that land, would require me or anybody else that took up land in that manner to commit perjury, and would make him out a liar.

Q. What did he say?

A. He said that was all right.

Cross-examination.

(By Mr. WALSH.)

Q. What did you say your business is?

A. I am a rancher, and at the time that this inquiry is relating to I was butchering; I am not butchering just at the present time.

Q. Where are you ranching?

A. On the Big Blackfoot, on Shanley Creek.

Q. Where did you conduct the butchering business?

A. On the ranch; I had a slaughter-house.

Q. What is the nearest place to your ranch?

A. Postoffice, you mean?

Q. The nearest town or village?

A. The nearest village is Ovando; Woodworth postoffice is on beyond me, nearer than Ovando.

Q. Is Ovando much of a place?

A. Probably twenty or thirty inhabitants.

Q. And Woodworth is a postoffice?

(Testimony of Lewis A. Wells.)

A. Yes, sir, a private residence, a ranch, four or five people.

Q. And you worked, conducting the butchering business on your ranch? A. Yes, sir.

Q. And how far away from Ovando was your ranch?

A. My ranch is about ten miles, more or less.

Q. Where did you sell your meat?

A. To the logging camps to the drive, and the ranchers.

Q. Where did you get it?

A. Bought it from the ranchers.

Q. You quit that business? A. Yes, sir.

Q. And what business are you in now?

A. Ranching.

Q. How much ground do you cultivate?

A. What you mean by cultivation, hay land or what we plow and irrigate and raise crops?

Q. Well, you can tell either that you care to.

A. Well, I had about sixty acres of oats this year, and seventy-five or a hundred acres of meadow land that was mowed.

Q. Have you any other business besides ranching?

A. No, sir, not at present.

Q. Did you ever run any other business in that neighborhood besides ranching and the butcher business?

A. Not within my recollection.

Q. Do you do any lumbering?

A. No, sir, only for my own use.

Q. What do you do for your own use?

(Testimony of Lewis A. Wells.)

A. Lumbering.

Q. Yes.

A. I cut some logs on Government land.

Q. Where?

A. On a vacant forty, an isolated forty, adjoining my land.

Q. Adjacent to your land? A. Yes, sir.

Q. You have got a homestead there?

A. Yes, sir.

Q. What did you do with the logs you cut on this forty? A. Had them sawed.

Q. Where did you have them sawed?

A. On my ranch.

Q. How did you saw them? A. With a mill.

Q. You put a portable sawmill there?

A. There was a portable sawmill came there and cut them.

Q What did you do with the lumber?

A. Most of the lumber is there on the place in buildings, or on the other place, on the ranch.

Q. What kind of title did you have to this forty acres? A. I had no title to the forty acres.

Q. How did you acquire the right to cut the timber?

A. There was a permit issued to ranchers to cut one hundred dollars worth of lumber or logs on unclaimed Government land, of which I took advantage; Mr. Sharp and myself put in logs together.

Q. When was that permit issued?

A. Why, this first permit for one hundred dollars,

(Testimony of Lewis A. Wells.)

I don't know when it was issued, but it was in force, I believe, up to about two years ago, or two years this coming February.

Q. Where did you make any application to cut timber on public lands?

A. I didn't have to make application for that permit to cut it or under this subsequent permit either.

Q. How much did you cut?

A. That I couldn't say exactly; it was not very much, a matter of eight or ten days sawing with a saw mill, a four-man mill.

Q. Four men? A. Yes, sir.

Q. How much did that mill cut a day?

A. Oh, it is hard to say; probably five to seven thousand.

Q. Feet of lumber?

A. Yes, sir. There was a large amount of the first lumber that we got was cut into house logs; that we would turn off more feet of square timber in a day, cuting it into large logs, thao we would to ceut it into inch lumber.

Q. How many feet of timber did you cut?

A. I couldn't say; we didn't cut anywhere near what we were allowed by the permit to ranchers.

Q. I wish you would tell us how many feet you cut.

A. I couldn't tell you, sir; we didn't cut as much as we were allowed; that I know.

Q. You have been in the woods a good deal, haven't you? A. Yes, sir.

(Testimony of Lewis A. Wells.)

Q. You have worked in the woods?

Q. What do you mean?

Q. You have worked in the lumber woods?

A. As a lumberman?

Q. In any capacity, have you worked in connection with cutting timber? A. Only for myself.

Q. You know how to estimate the amount of timber in a tree, don't you? A. Yes, sir.

Q. You know about how much you cut down?

A. I do when I am at work, yes, sir.

Q. I wish you would tell me about how many feet of timber you cut on that forty-acre tract?

A. I haven't any figures to go by at present; I couldn't tell you, sir.

Q. You had figures to go by, had you not?

A. We measured the lumber when we were through to see how much we had.

Q. How much did you have?

A. I couldn't tell you, sir; it was a small amount; I think it was very close in the vicinity of one hundred thousand feet.

Q. Of lumber you cut?

A. Yes, sir. Now, excuse me; that was the first cut.

Q. And the second cut?

A. And the second cut might have been, I think, about ninety thousand.

Q. Or about two hundred thousand altogether?

A That is not all.

(Testimony of Lewis A. Wells.)

Q. What else?

A. The third cut included logs that were cut the third year and were left in the woods on account of the snow going out so that we couldn't haul them; the next year we cut again, and those two combined amounted to a hundred and fifty-eight thousand. They just finished cutting about two or three weeks ago, so I know; the lumber is there now piled up so that anybody can measure it.

Q. So that there was one hundred thousand and ninety thousand and a hundred and fifty-eight thousand cut?

A. Well, that is approximate on the first two, because I wouldn't want to say that that was exact.

Q. Approximately then, you cut three hundred and fifty-eight thousand feet of timber?

A. Somewhere between three hundred and forty and fifty altogether.

Q. That was you and your neighbor—what was his name?

A. Sharp. There were others that cut and put in there at that mill, but that I had nothing to do with.

Q. What is that lumber worth there?

A. Stumpage, you mean?

Q. No, but the lumber after it is cut up?

A. That I couldn't say; I don't know.

Q. You know what lumber sells for at the mills there, don't you?

(Testimony of Lewis A. Wells.)

Q. Why, that lumber sells from six to eight dollars; I am not engaged in selling lumber at all.

Q. You buy lumber sometimes, don't you?

A. I haven't bought any lumber for fifteen years.

Q. Where did you get your lumber to build your buildings?

A. That was the lumber that I had cut.

Q. Didn't you have any buildings before you cut that lumber?

A. Log buildings, and the lumber I hauled one hundred and twenty-five miles to put the floors and doors in.

Q. Where did you get that lumber?

A. I got that lumber at Avon, one hundred or one hundred and twenty-five miles I had to haul it; I don't know where that lumber came from.

Q. Where was this mill put up?

A. On my ranch?

Q. Yes.

A. It was put up directly behind my buildings.

Q. Whose mill was it?

A. That I couldn't tell you; I don't know whose mill it was.

Q. How did it come to get on your ranch; did it drop down there from the clouds?

A. Did you ask me where that mill came from?

Q. Do you know whose mill it was?

A. I don't know, sir.

Q. Tell us how it came on your ranch?

(Testimony of Lewis A. Wells.)

A. It came on there by horse power; six horses on the engine.

Q. Came against your protest, did it?

A. No, sir.

Q. Or at your invitation?

A. At my invitation; at my request.

Q. Tell us whom you invited to bring the mill there?

A. I invited a man by the name of Griffith to bring the mill there, but whether it belonged to him or not I don't know.

Q. He was in possession of it?

A. He was in possession of it.

Q. He was operating it?

A. He was doing the sawing, running the saw.

Q. But you don't know who owned it?

A. I do not; I didn't know then, nor I don't know now.

Q. Now, who else had lumber cut there besides yourself? A. Henry Sharp.

Q. Where does he live?

A. He lives five or six miles from me, west.

Q. Now, was there any lumber cut there except for yourself and Sharp? A. Yes, sir.

Q. For whom?

A. There was some cut for A. W. Griffith and some cut for J. T. Manning; I don't know whether there was any cut for anyone else or not, but I think there were a few timbers.

Q. You sold some of that lumber, didn't you?

(Testimony of Lewis A. Wells.)

A. I did.

Q. To whom?

A. I sold some to the Big Blackfoot Milling Company.

Q. How much did you sell to them?

A. I couldn't tell you, sir; that was the lumber of the first cut.

Q. About how much did you sell to them?

A. I couldn't tell you, I don't know. We had very little lumber; we sold them some camp covers or roofs.

Q. Twenty thousand feet?

A. Oh, I couldn't say whether there was that much or not.

Q. What did you sell it for? A. For cash?

Q. How much per thousand?

A. Eight dollars, I believe, was what we got for it, but I wouldn't be positive of that.

Q. And you couldn't tell us how many feet you sold?

A. No, sir. We had but very little lumber.

Q. You couldn't tell whether it was more or less than twenty thousand feet?

A. I don't think that that is far out of the way.

Q. Where did you get your permit to cut up these logs into lumber and sell it?

A. I told you that I didn't get any permit. This permit is a circular issued by the Department of the Interior, I believe—I had a copy of it—granting to settlers so many dollars' worth of stumpage on unclaimed Government land for their own use.

(Testimony of Lewis A. Wells.)

Q. What did you pay for cutting this lumber up?

A. I believe that I paid four dollars per thousand.

Q. Are you sure about that?

A. Yes, I am sure of it—I think that was the price; it might have been a little less.

Q. Now, as I understand you, you had expressed your disapproval of taking up land under the Timber and Stone Act? A. I did.

Q. And that, because it was necessary to commit perjury? A. Yes, sir.

Q. Well, you don't mean to say that a man couldn't take up land under the Timber and Stone Act without committing perjury, do you?

A. I believe that he could.

Q. You took up a timber and stone claim yourself, didn't you? A. Yes, sir.

Q. Did you commit perjury when you took it up?

A. No, sir.

Q. Where did you take up your timber and stone claim?

A. In section twenty-two, the township and range I don't know; it is within about two miles of Ovando.

Q. When did you take it up?

A. I don't know the year, 1898 or 1899, I forget just which now, but it was the year that all these other claims were taken.

Q. The summer of 1899, wasn't it?

A. I believe that was it.

(Testimony of Lewis A. Wells.)

Q. That is when all those people around there were taking up timber claims, you took up one?

A. Yes, when everyone was after claims, that was the time that I took mine.

Q. How did you come to take that particular claim?

A. I don't understand what you mean?

Q. How did you come to take that particular claim?

A. Because it was a good claim; there was lots of timber on it.

Q. How far was it from your home?

A. That was in the vicinity of twelve miles.

Q. When had you been on it next preceding the time that you went on it for the purpose of locating it?

A. I had crossed that claim all the way, or was on that land on an average of six times a week during the summer season.

Q. What were you doing there?

A. Crossing that land; I drove through it, there is a road runs through it. I had seen it often.

Q. How did you know it was vacant at the time you located it? A. I made inquiries.

Q. From whom?

A. I believe I made inquiries at the land office. Mr. E. R. Kilburn also told me that it was vacant.

Q. That is the same Kilburn that was working for Mr. Griswold, was it?

A. He was then running the drive for the Big Blackfoot Milling Company; it is the same man, yes, sir.

Q. What time of the year was it that you located?

(Testimony of Lewis A. Wells.)

A. It must have been somewhere in the month of May or June; I know that I was furnishing beef for the drive at that time.

Q. Where did you meet Kilburn?

A. At the drive.

Q. Where is that?

A. On the Big Blackfoot and Clearwater. I saw him on an average of once in four or five days.

Q. Did you have any maps from the land office?

A. I have plats.

Q. Where did you get the plats?

A. I got them—well, I had vacant plats, township plats, vacant, unmarked.

Q. Yes, but did you have any plats from the land office indicating what lands had been taken up?

A. No, I got none direct from them, but I wrote to the land office and found out about certain pieces of land.

Q. To which land office did you write?

A. To the land office here at Helena.

Q. When did you write?

A. I couldn't say as to when I did write; in the spring of that year, I suppose. If I didn't write I got someone else to write; I made inquiries through this office.

Q. Did you write to the land office to ascertain whether this particular tract that you took up was vacant? A. I knew that that tract was vacant.

Q. How did you know it?

(Testimony of Lewis A. Wells.)

A. I heard other people talk about it.

Q. Whom did you hear?

A. I heard Mr. Jakways, Mr. Griswold and Mr. Kilburn; I knew it was vacant.

Q. These people told you so?

A. They didn't tell me so; I heard them say so. They were talking to other parties—that is, Kilburn was. Mr. Jakways told me it was vacant, and that he had a party that he thought was going to take it.

Q. Mr. Griswold told you so and Mr. Kilburn told you so?

A. I don't think Griswold told me that the land was vacant, but that Jakways had a party in view to put on that land.

Q. Who went on the land with you when you went to take it up?

A. C. A. Jakways was the last man that was on the land with me.

Q. That is Jakways of Jakways & Faust?

A. Yes, sir. He didn't go on the land with a view of showing me the land.

Q. What did he go on it for?

A. To run some lines further north; to look over some land in that country.

Q. Who were your witnesses named in your advertisement?

A. There was my wife, Jakways, and I believe Mr. Griswold; I wouldn't say who the other was, or whether there was another, but I think there was.

(Testimony of Lewis A. Wells.)

Q. You named four in your final proof, didn't you?

A. I couldn't swear whether I did or not, but I believe that I did.

Q. You have given us three, Jakways, your wife and Griswold; who was the other?

A. I believe the other was Henry Sharp; I couldn't say.

Q. Who were the witnesses who went with you when you made your final proof?

A. My wife and Mr. Jakways.

Q. Did Mr. Jakways go on the land with you?

A. Yes, sir.

Q. Went over it at the time that you went there for the purpose of making an inspection of it with a view to locating on it?

A. I believe that he did; Mr. Jakways was on there with me the day prior to my making the location.

Q. Where did you have this conversation with Mr. Cobban at Ovando?

A. On the veranda of the Goodfellow house.

Q. How far is that from Jakways' store?

A. One hundred and twenty-five feet or less.

Q. Was anybody else present?

A. No, sir, no one in sight or within hearing, unless they were inside the house.

Q. Who was present when you had the conversation at Griswold's?

A. There was no one present right at the buggy.

Q. Now, Mr. Wells, isn't it a fact that at Ovando, at

(Testimony of Lewis A. Wells.)

this conversation that you speak of, you wanted to get the money from Mr. Cobban with which to make final proof upon this land, and that he refused to let you have it? A. No, sir.

Q. And isn't it a fact that you got angry at him by reason of the fact that he wouldn't let you have the money, and that that is why you are here testifying?

A. No, sir, it is not.

Q. You have not felt very kindly toward Mr. Cobban for a long time, have you? A. No, sir.

Q. What was it about?

A. Mr. Cobban accused me of sending him letters with obscene language in them.

Q. When was that?

A. That was, I think, just before I made final proof, or right afterwards.

Q. Well, you had a row about it, didn't you?

A. I never said a word to Mr. Cobban about it. I couldn't find Mr. Cobban to talk the matter over him. I told Mr. Dinsmore that I would like to see those letters; I told him if he had received any such letters as that with my writing or my signature to them, that he could send me over the road for them, that somebody was humbugging him. I wanted to see the letters.

Q. Where was this?

A. That was in Missoula. Mr. Cobban, I understand, has received a number of such letters, I have been told so, all purporting to come from me.

(Testimony of Lewis A. Wells.)

Q. With whom did you have that conversation, Mr. Dinsmore, did you say?

A. Samuel Dinsmore, yes, sir.

Q. And that was in Mr. Cobban's office in Missoula?

A. No, sir.

Q. Where was it?

A. It was outside; I don't remember; it might have been in the office. We spoke about it a number of times. Mr. Kilburn also told me about that. In the last three months, Mr. Kilburn told me, Mr. Cobban received letters that he credited to me.

Q. Where did Mr. Kilburn tell you that?

A. In Missoula.

Q. Mr. Kilburn told you that Mr. Cobban had received letters from you which Mr. Cobban had said contained obscene language?

A. He told me the contents of the letter, and certainly the contents wasn't very nice. Mr. Cobban wouldn't show me the letters, and he wouldn't give me any chance to refute the assertions in them, and naturally I got warm about it, and I haven't got over it yet I had nothing against Mr. Cobban that I would put in writing at all; if I had anything to say to Mr. Cobban, I would like an opportunity to tell him to his face.

Q. You couldn't find Mr. Cobban?

A. I didn't find him.

Q. What were you doing in Missoula?

A. I went in once a month to settle up my business.

Q. What was the occasion of your being there at that time? A. I believe that was it.

(Testimony of Lewis A. Wells.)

Q. That was at or about the time that you made final proof?

A. I couldn't say about the final proof; I am in Missoula quite often.

Q. Didn't you say a few minutes ago that it was just before, or about the time that you made final proof, that you talked with Dinsmore about it?

A. That was regarding the time that I had this conversation with Dinsmore.

Q. Yes, that is what I am talking about; it was at or about the time that you were making final proof that you had the talk with Dinsmore about this matter in Missoula?

A. It might have been about that time; I think it was, because I know that my business takes me there just about so often, and if I have any other business, I try to arrange it so it will come along about the first of the month.

Q. What was the occasion of your meeting Mr. Dinsmore that time? A. I couldn't say.

Q. Just a mere accidental meeting?

A. I couldn't say that it was an accidental meeting. I may have talked with Mr. Dinsmore more than once about it; I think I have. I had heard of this thing, this first letter that I heard of, for some time prior to my meeting with Mr. Dinsmore.

Q. You can't tell us, though, whether it was a mere accidental meeting, or whether you had some business

(Testimony of Lewis A. Wells.)

to transact with Mr. Dinsmore, and the matter came up in that way?

A. I couldn't no; I don't know whether it was a business meeting or not. I talked with Mr. Dinsmore about it on more than one occasion, I know; I am positive of that.

Q. When did you make final proof?

A. I couldn't give you the date; the records will show when I made it.

Q. You don't remember about that?

A. I remember making the final proof, yes, sir, but I couldn't tell you the date.

Q. You don't remember, either, about the date that you made the application?

A. No, sir, I have no memorandum of it, and the records will show when I made the application and when I made the final proof.

Q. And you don't remember, either, what the occasion was of your meeting Mr. Dinsmore and talking about this matter, whether it was accidental or what?

A. About what matter?

Q. About this matter of the stories you had heard to the effect that Mr. Cobban had said that you had written obscene letters to him. You don't remember what the occasion of your meeting Mr. Dinsmore was, whether it was on some business matter, or a mere accidental meeting?

A. Well, sir, I wouldn't want to say that; I don't remember, I believe, though, that it was a business matter.

(Testimony of Lewis A. Wells.)

Q. Now, you go to Missoula about once a month, you say? A. Sometimes oftener.

Q. You were going oftener at that time, or at least once a month? A. At least once a month.

Q. That was some time during the summer or fall of 1899? A. Yes, sir.

Q. You have had plenty of opportunities since to see Mr. Cobban, have you not?

A. No, sir; I don't see Mr. Cobban but very seldom.

Q. You knew he was in Missoula all this time, didn't you?

A. I don't know that he was; I wasn't in Missoula.

Q. Did you ever say anything to Mr. Cobban about this matter of these stories that you heard?

A. No, sir.

Q. Never said a word to him about it?

A. No, sir.

Q. From that day to this?

A. No, sir, not to my recollection; I don't think that I have had but three conversations with Mr. Cobban in my life; I couldn't swear to more.

Q. Was this the beginning of the ill-feeling between you and Mr. Cobban?

A. Yes, sir. Mr. Cobban was circulating stories about my letters that he claimed I had written to him, or anonymous letters, for I don't know whether they were signed by my name or not, and I didn't like it. He didn't take any occasion to ask me whether I had written them, or ask any explanation of me.

(Testimony of Lewis A. Wells.)

Q. You expressed yourself quite freely and vigorously about it, didn't you?

A. Certainly I did.

Q. Now, what do you know about Mr. Cobban having said anything of that kind at all?

A. Nothing but hearsay.

Q. Did you ever ask Mr. Cobban if he said so?

A. No, sir, but his business partner told me that he had, that is, Mr. Samuel Dinsmore.

Q. Told you that Mr. Cobban had said that you had written him obscene letter or letters containing obscene language?

A. Yes, sir. He didn't say that I had written him obscene letters; he told me the contents of the letters, which would prohibit it from going through the United States mails.

Q. Did you ever talk this matter over with Mr. Griswold? A. About these letters?

Q. Yes.

A. Why, I believe that I did. I don't know that I did; I wouldn't swear that I did, but I am quite positive in my mind that I must have said something about them, for I endeavored to find out who did write them.

Q. From whom did you endeavor to find out?

A. I made inquiries all around, to see if I could get any trace of who it was that was trying to do me an injury, what they call doing me dirt.

Q. You never asked Mr. Cobban to let you see the letters?

(Testimony of Lewis A. Wells.)

A. I asked Mr. Dinsmore if he could get the letter from Mr. Cobban, or if it was where he could get it.

Q. Why couldn't you go to Mr. Cobban?

A. Mr. Cobban wasn't there at the time I talked with Mr. Dinsmore.

Q. Where was Mr. Cobban at that time?

A. I believe he was in Butte.

Q. Don't you know that Mr. Cobban was in and about Missoula the whole of the summer and fall of 1899, and was not in Butte?

A. I am over in Missoula once a month; how do I know whether he was there the balance of the time or not? He was not there at the time I was there, or if he was, I didn't see him.

Q. How many times were you there?

A. In Missoula?

Q. Yes.

A. I am over in Missoula once a month on an average and sometimes oftener.

Q. And you never went to Mr. Cobban, telling him that you had heard that he had said that you had written letters of that character, and asking him to let you see the letters?

A. I was in his office, Cobban & Dinsmore's office, quite a number of times. That was the purpose I went in there for, was to make inquiry about those letters, and Mr. Cobban wasn't there. I didn't tell anybody what my business was in there.

(Testimony of Lewis A. Wells.)

Q. Do you remember meeting Mr. Griswold at any time in the summer or fall of 1899, in Missoula?

A. Why, I expect I met him a good many times, though I have no recollection of when I met him in there.

Q. How did it come about that you met Mr. Griswold a great many times when you went to Missoula, and you couldn't meet Mr. Cobban?

A. Why, Mr. Griswold is a man that I am able to keep track of better than I am of Mr. Cobban.

Q. How is that?

A. Mr. Griswold's business was up and down the river, and I met him almost every day.

Q. I am speaking about Missoula?

A. I knew when he was in Missoula, and where to find him in Missoula.

Q. You and he are pretty good friends, aren't you?

A. Yes, sir.

Q. Do you and he ever drink any when you are in Missoula together?

A. Yes, sir; I take a drink with my friends.

Q. That was a rather frequent occurrence, wasn't it, that you and Mr. Griswold would be found drinking together in Missoula during the summer and fall of 1899?

A. I don't know that it would be a common occurrence that we would be found drinking together; whenever we met we would have a drink in Missoula.

Q. Were you ever at the Gem Theater in Missoula with Griswold? A. Yes, sir.

(Testimony of Lewis A. Wells.)

Q. What is that?

A. A variety theater and drinking hall.

Q. When were you there with Griswold?

A. If you want me to give the dates, I can't do it.

Q. Well, generally?

A. Generally in the evening.

Q. That is, about every time that you and Griswold were at Missoula in the evening, you would be down at the Gem Theater, drinking down there?

A. Not always drinking, I didn't say that; we might have a drink. It is required of you to buy a drink or a cigar when you go in, for admission; that is the requirement of the house to secure admission, that you patronize the bar or you can't go in.

Q. Now, how many times were you at the Gem Theater with Mr. Griswold during the summer or fall of 1899?

A. I couldn't tell you, sir.

Q. Do you remember any particular occasion when you were there? A. Not with Mr. Griswold.

Q. Do you remember being there with him?

A. I have been there with him; yes, sir.

Q. Were you with him there during the fall or summer of 1899?

A. I expect that I was; I don't remember any particular time.

Q. Do you remember an occasion of your being there one time when Mr. Cobban was canvassed between you and Mr. Griswold?

(Testimony of Lewis A. Wells.)

A. I couldn't say that I ever canvassed Mr. Cobban with Mr. Griswold in the Gem Theater.

Q. Would you say that you did not?

A. No; Mr. Cobban and Mr. Griswold were topics of very common conversation with us, about this timber business.

Q. Was that before or after the occasion that you speak of when Mr. Dinsmore told you that Cobban had said you had written letters to him containing obscene language?

A. That I visited the variety show?

Q. Yes.

A. I visited the variety show with Mr. Griswold before I ever heard of Mr. Cobban.

Q. Did you since?

A. I don't know that I have been in there more than once or twice in two years.

Q. Isn't it a matter of fact, Mr. Wells, that some time during the summer or fall of 1899, being in the Gem Theater with Mr. Griswold one evening, and you and he drinking together there, that you said that you were going to do up the son of a bitch, referring to Cobban?

A. I don't think that I ever made that expression.

Q. What was the expression that you used?

A. I believed the expression I used was that I would punch his head if I caught him up the Blackfoot river where there were no witnesses if he didn't quit telling that I had been writing him anonymous letters.

(Testimony of Lewis A. Wells.)

Q. That was what you said?

A. I know that I made use of that expression.

Q. What did Griswold say?

A. I don't know that Griswold made any comments on it at all.

Q. Did any of your neighbors take up land under the Timber and Stone Act during the summer and fall of 1899?

A. Well, that is a pretty hard question to answer; there were a number of people, relatives of Mr. Jakways, whose ranch joins mine, relatives of his or his wife, though I didn't quite consider them neighbors—I wasn't acquainted with them to any extent to be called neighborly—that took up claims; otherwise I don't bring to mind anyone.

Q. What relatives of Jakways and Faust's do you refer to?

A. Why, Mrs. Hawthorne, I believe was one.

Q. Where does she live?

A. I couldn't say; she stayed the summer or part of the summer with Mr. Jakways on the ranch. I don't know whether she was a relation of Jakways, or his wife; I believe, though, that she was of Mr. Jakways.

Q. Anybody else?

A. I don't know of anyone else.

Q. That is the extent of the relatives of Jakways and Faust?

A. That are neighbors, that would be anywhere what you would call neighbors. If you want to extend the

(Testimony of Lewis A. Wells.)

distance, there were lots of people in that vicinity, within twenty or thirty miles, that took up claims.

Q. Who were your nearest neighbors?

A. I don't know; at the present time we have neighbors within a quarter of a mile; I don't think they were there at that time, though.

Q. Who was your nearest neighbor at that time?

A. Now, this party that I speak of being within a quarter of a mile, I am not sure that they were there at that time, but leaving them out, it lay between Manning and Jakways; I don't know which of them was the closest. Their lands joined mine, both of them, and I think their residences are each about the same distance from mine.

Q. Jakways was one of your nearest neighbors, then?

A. Yes, sir.

Q. Did he take up a timber claim?

A. He has already taken up one.

Q. When did he take up his?

A. Four or five years previous.

Q. Do you remember that he committed any perjury in taking up his claim?

A. I was not present; I don't know what his testimony was.

Q. Don't know anything at all about it?

A. I know he took up a claim.

Q. Did Mr. Manning take up a timber claim?

A. I don't know; he got some land, I believe, eighty acres, but how he got it, whether it was stone and tim-

(Testimony of Lewis A. Wells.)

ber, or whether it was isolated land that he got it under, I don't know, but he got eighty acres of land, I believe, partially timber and partially open ground.

Q. You don't know that he committed any perjury, do you? A. No, sir.

Q. Who is your next nearest neighbor after these two gentlemen?

A. You refer to the time that this stone and timber business was going on, not at present?

Q. I mean any time that your neighbors took up timber and stone claims.

A. Well, no one, then; I don't think I can bring to mind anybody any nearer than Ovando.

Q. Who at Ovando took up a claim that you know of?

A. Well, there were quite a good many; I don't believe that I could enumerate them all. There was Hoyt—

Q. They were the next nearest to you?

A. Well, that I can bring to mind.

Q. Let us hear some of those?

A. The Muchmores, two Donys, two Hoyts, I think there were four or five Muchmores, Mat Dunham—

Q. Did Mr. Faust take up a claim?

A. He had taken his up before, I believe, some years before; he had used his right.

Q. Do you know what he did with his claim?

A. I don't know what he did with it, but I understand that it belongs to some Chippewa parties, now.

Q. Sold it? A. I suppose he did.

(Testimony of Lewis A. Wells.)

Q. Do you know of any perjury that Mr. Faust committed in taking his claim?

A. I don't know anything about the proof that he made; I haven't seen them; I was not present when he proved up.

Q. Well, you were not present when any of these other people proved up, were you?

A. Well, if I was to say what I heard, you would say it was hearsay.

Q. Were you present when any of these other people proved up? A. No, sir.

Q. Have you told all the people around your neighborhood that took up timber claims?

A. I can't say that I have; if I had a list of the names I might be able to point out a few more.

Q. You know that Mrs. Faust took up a claim, don't you? A. Yes, sir.

Q. When did she take up her claim?

A. She took it up in the spring, I believe, of the year that they all took up those claims.

Q. Do you know of any perjury that Mrs. Faust committed?

A. She took it up for speculative purposes, I know that; she couldn't do anything else very well.

Q. That is what you mean, is it; that is the way you mean the perjury was committed, because they took the claims up for speculative purposes?

A. Well, I suppose that would be perjury.

Q. Do you know anything about Mrs. Faust's claim?

(Testimony of Lewis A. Wells.)

A. Yes, sir.

Q. What do you know about it?

A. I know that a man that worked for me went to Mr. Jakways, the United States land commissioner there, to see if he could file on that land. The United States land commissioner told him that it was a portion of a permit granted to the Big Blackfoot Milling Company, and the permit had about expired, and he would have to write to the Department to ascertain if that land was still in the market to the people or to the Big Blackfoot Milling Company, and it would take about fourteen days to find out. The next day Mrs. Faust went over to that claim, or started over to it—I don't believe she ever reached it—on snowshoes on four feet of snow, to see this land, and the following day she went out to file on the land. Mrs. Faust is the wife of Mr. Jakways' partner and brother in law.

Q. Did you hear Mr. Jakways tell your man this?

A. No, sir.

Q. Your man told you what Mr. Jakways had told him? A. Yes, sir.

Q. And you are merely telling us what you have heard at second-hand, then? A. My man told me.

Q. That is all you know about Mrs. Faust's claim?

A. That was first handed; I wouldn't consider that second handed. Mr. Faust didn't tell me anything.

Q. Your man told you what Mr. Jakways had told him?

(Testimony of Lewis A. Wells.)

A. Yes, sir. There were two of the men that worked for me.

Q. Do you know anything more about Mrs. Faust's claim except what your man said Mr. Jakways said?

A. I know it was good timber; that is all I can say about it; it was a fine claim, one of the best on the river.

Q. Do you know anything else about Mrs. Faust's claim?

A. Not that I bring to mind, further than the man who wanted to take the claim is now working on the Clearwater up the Big Blackfoot, and he says he is willing to make affidavit to the fact that Mr. Jakways humbugged him, lied to him for the sake of getting the claim for his relatives by marriage.

Q. Now, do you know anything else about Mrs. Faust's claim? A. I think that is about all.

Q. And yet you are willing to swear here that Mrs. Faust took that claim for speculative purposes?

A. I didn't say that she took it for speculative purposes; I said she must have taken it for that. She certainly had no use for it except to sell it, to keep it for realization it.

Q. That is, you think Mrs. Faust took up her claim with a view to selling it eventually; is that what you desire us to understand?

A. I couldn't say that I know it, for I don't know it.

Q. The fact is that you don't know one thing on earth about whether Mrs. Faust did or did not commit any perjury in taking her claim, do you, any more than I do.

(Testimony of Lewis A. Wells.)

A. Well, you might know more about it than I do. I don't know that she committed any actual perjury.

Redirect Examination.

(By Mr. MAYNARD.)

Q. What was the occasion of your going at the end of each month to Missoula?

A. To settle up my business with the Big Blackfoot Milling Company.

Q. What was that business?

A. Presenting my bills against the various contractors, getting their orders on the company, and going to Missoula with the check that the company gave me, to cash it.

Q. Did you furnish them with meat? A. I did.

(By Mr. ZEVELY.)

Q. What is the name of this land commissioner up there? A. Charles A. Jakways.

Q. Now, what was the name of your man as you call him at that time?

A. Fred Hall is the only name that I know him by.

Q. Where is he now?

A. He is working in what they call the old George Hammond camp on the Clearwater, tributary to the Big Blackfoot.

Recross-examination.

(By Mr. WALSH.)

Q. What kind of land commissioner is C. A. Jakways?

A. Why, I believe he is deputy, isn't he? I believe

(Testimony of Lewis A. Wells.)

he is deputy United States land commissioner. He receives final proofs on homesteads, desert claims and tree claims, that is what he does. I don't know whether it is a deputyship or not, but I think it is. I wrote Mr. Greene concerning him, and he informed me that his commission came through the United States District Court, I believe; I think that was it.

Q. That is, he is a United States commissioner, appointed by Judge Knowles?

A. That is what I inferred.

Q. Having the power to administer oaths and take final proofs in land entries?

A. He does it, certainly.

LEWIS A. WELLS.

Subscribed and sworn to before me this 20th day of December, 1901.

HENRY N. BLAKE,
Examiner in Chancery.